Public Utilities

FORTNIGHTLY

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January 3, 1946

78

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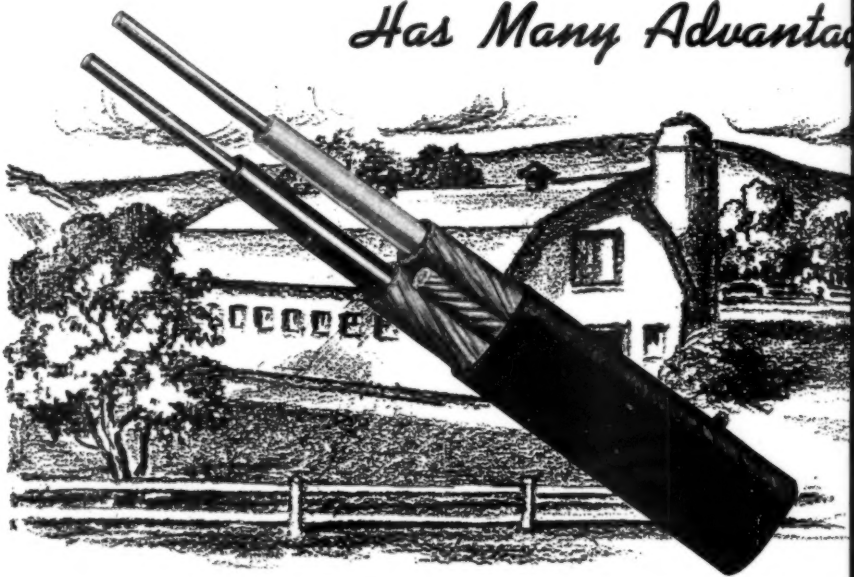
CRESFLEX

Type TX

NON-METALLIC SHEATHED CAB

Has Many Advanta



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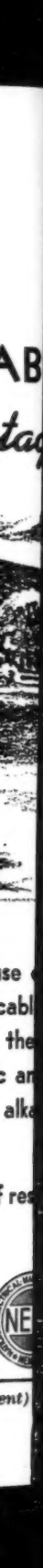

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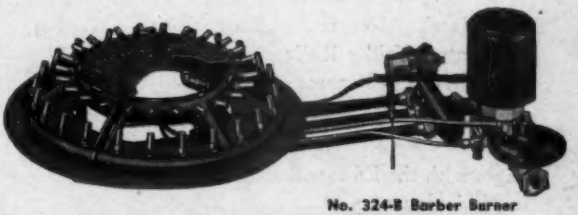

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Public Utilities Fortnightly

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Pages with the Editors

A MOST interesting meeting of nine scientists was recently arranged by the National Association of Manufacturers to discuss the possible use of atomic energy by American industry. Needless to say, all public utility companies might well follow any such discussion closely. The specific question asked of the nine scientists by Dr. James B. Conant, president of Harvard University, was "How long will it take to develop an atomic power plant of 100,000-kilowatt capacity which would compete with coal at $15 a ton?"

IT may amaze some of our more complacent friends in established public utility circles to learn that the answers varied from three to twenty years. It may further be surprising to some that the scientists generally agreed that the principal obstacle to be overcome was not the development of a mechanical technique for applying atomic energy to electric power generation, but what the layman might regard as a secondary problem—the development of some protection of workers from the powerful radiations given off by a supply of uranium.

THE government licked this protection problem, in developing the atomic bomb, in its operations at Hanford plant on the Columbia river, and at Oakridge, Tennessee. But private industry would have to do it in a way much less expensive than the government's procedure, in order to make atomic energy of practical use to private industry. The protection of workers would probably have to take the form of massive metal plates or armor to shield the workers from the destructive radiation. And this very fact suggests that the first industrial use of atomic energy will almost certainly be in the field of central station electric power generation, rather than as a substitute for smaller power-making units such as locomotives, automobiles, and so forth.

JOHN P. CALLAHAN

A new leadership with fresh viewpoint and vitality is taking over the utility business.

(SEE PAGE 14)

AS one of the scientists pointed out, if a 100-horsepower atomic power plant, capable of substituting for an ordinary automobile engine, would require 50 tons of protective material, it is obvious that even designers of locomotives and steamships may prefer to burn coal or oil. This would automatically rule out for decades, and possibly generations (unless some entirely new light-weight technique for ray protection is discovered or developed), the use of atomic power for airplanes or automobiles.

ON the other hand, the application of atomic energy to conventional electric power generation would be quite feasible, even assuming the necessity for such bulky protection. If and when this comes to pass, it should not change the American scene too much—at least in the beginning. We shall continue to use all the old familiar appliances and a good many new ones now in the process of cerebral incubation. We would simply substitute for ordinary fuel, a uranium pile good for many years. Fuelless regions would probably be the first to make use of atomic energy, such as Canada and some of the less fortunate European countries.

MAJOR General L. R. Groves, director of the Army's bomb development, was top man in guessing "how soon." He placed his estimate in "decades," which subsequent discussion indicated to mean about twenty years. It was Dr. J. A. Wheeler, professor of physics at Princeton University, who thought the goal might be realized in from three to ten years under ideal circumstances. Dr. Charles Thomas, vice president of Monsanto Chemical

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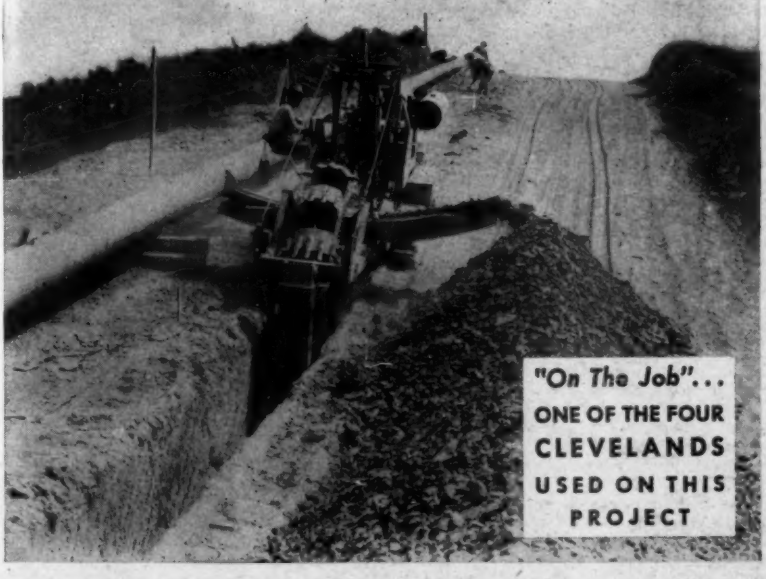
ON THE GOLETA PIPE LINE . . .

. . . which had to be built under sidewalks, lawns and paved streets, across mountains, canyons and farm fields, under rivers and along secondary and primary state highways. (16" and 18" natural gas line from La Goleta Field to Los Angeles.)



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Company, estimated that the job could be done in ten years. All nine men agreed that the time could be shortened if more expensive coal were taken as a base.

DR. CONANT used his arbitrary $15-a-ton base because he said he had in mind regions to which fuel in any form had to be hauled from some distant source. Other members of the symposium panel were Dr. G. T. Felbeck, vice president of Carbide & Carbon Chemicals Corporation; Dr. Crawford H. Grenewalt, of the DuPont Company; P. C. Keith, president of Hydrocarbon Research, Inc.; William L. Laurence, science writer for *The New York Times*; and James C. White, president of the Tennessee Eastman Corporation.

THE unique feature of the uranium energy process seems to be the low temperature developed. Scientists have known for some years, especially in experiments with solar engines, that an engineer can drive a turbine with a small amount of heat by using a low-pressure turbine able to extract heat from low-temperature steam. We have also known that this does not prevent further utilization of high-pressure turbines driven by superheated steam. The low-pressure unit would simply generate electricity which in turn would superheat steam to drive the high-pressure turbine.

WITH such matter-of-fact discussion and predictions by men who obviously know what they are talking about, it is difficult to understand the continued reaction of those, in both government and industry, who go on making plans for projects that will last from fifty to one hundred years, in the same manner such plans have always been made, and just as if the atom had never been split. To say the least, it seems to be taking a longer time to wake up some of our so-called leaders to the fact that the atom is here to stay than it did to develop the atom bomb itself.

IT was *The New York Times* writer, Laurence, who contended that if General Groves —the most pessimistic prognosticator of the entire 9-man panel—were given full authority such as he had on the original development of the bomb, "we could be using atomic energy for peaceful purposes in less time than it took us to build the first bomb."

AND yet there is evidence that a good many people in Washington are beginning to respond to at least a subconscious feeling that we have crossed the threshold of a new era. In the opening article in this issue, our staff managing editor, FRANCIS X. WELCH, attempts to estimate this vague dawning consciousness in terms of his annual prediction of things to come in 1946. MR. WELCH'S batting average was 800 for his 10 predictions one year ago. If he does nearly as well on his 10 predictions for 1946, then there will be a lot more people in Washington thinking seriously about the atomic age than is popularly supposed.

JAN. 3, 1946

FRANCIS X. WELCH

The light of the atom bomb is gradually tinting all serious Washington thought.

(SEE PAGE 3)

WE welcome a new contributor to the FORTNIGHTLY pages in this issue, JOHN P. CALLAHAN, public utility news writer for *The New York Times*. His article on the newer generation of public utility executives begins on page 14. Prior to joining the *Times* staff in May, 1945, MR. CALLAHAN was director of public relations of the New York Curb Exchange for about seven years, national publicity director for the Benevolent and Protective Order of Elks for about a year, and an editorial specialist for the public information department of American Airlines for about six months. With such a background, MR. CALLAHAN surely is in a position to give us a pretty accurate description of the new leadership in public utility circles.

ROBERT M. HYATT, whose article on radar starts on page 23, is an industrial and business news writer who makes his home in Santa Barbara, California.

WILLIAM B. WHICHARD, whose article on the new carrier telephone begins on page 28, is a new member of the editorial staff of PUBLIC UTILITIES FORTNIGHTLY. Although the Arkansas carrier phone test covered in MR. WHICHARD'S article is still experimental, we are sure there will be much more heard about it.

THE next number of this magazine will be out January 17th.

The Editors

This Genie Solves your billing problems

In ancient Arabia lucky Aladdin called on his magic lamp and a Genie solved his problems.

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In This Issue

In Feature Articles

In Financial News

In What the State Commissioners Are Thinking About

In The March of Events

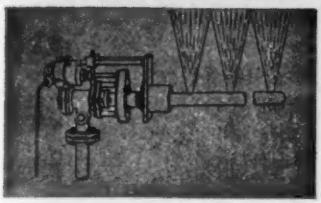
In The Latest Utility Rulings

PREPRINTS FROM PUBLIC UTILITIES REPORTS

Various regulatory rulings by courts and commissions reported in full text, pages 1–64, from 61 PUR(NS)

VULCAN PNEUMATICALLY OPERATED AUTOMATIC SEQUENTIAL SOOT BLOWER AND DESLAGGING SYSTEM

The system designed to use either STEAM or AIR as the blowing medium



AIR MOTOR DRIVEN ROTARY SOOT BLOWER UNIT WITH MULTI-JET HYVULOY, VULCROM, ALVULOY OR PLAIN STEEL ELEMENT AND BEARINGS

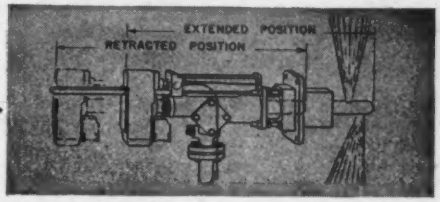
← VULCROMATIC MODEL LG-3 TYPE E-1

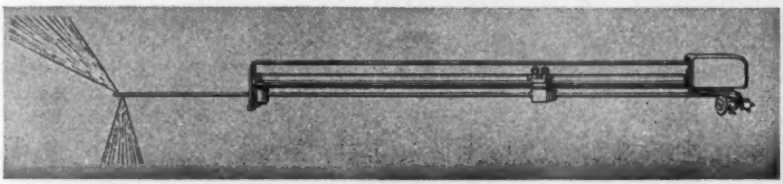
Use HyVULoy up to 1900° F, VULcrom or AlVULoy up to 1600° F and Plain Steel up to 900° F.

AIR MOTOR DRIVEN WATER WALL DESLAGGERS AND GUN TYPE MASS BLOWER UNITS.

MODEL RW AND MODEL RG →

12" Nozzle travel eliminates the necessity for air cooling in high temperature locations.





Air motor driven long RETRACTABLE MODEL T-2

For locations in boilers where the gas temperatures exceed 1900° F.

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1. Use either *STEAM* or *COMPRESSED AIR* as the Blowing medium.
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9. Reduces Labor and Fuel costs.
10. Reduces Maintenance and Operating costs.

VULCAN SOOT BLOWER CORPORATION

Du Bois, Penna.

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Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

EDITORIAL STATEMENT
The Wall Street Journal.

"Deficit financing has a bad name and it deserves it."

RALPH L. LEE
Employee coöperation expert, General Motors Corporation.

"You can't legislate a feeling of good will between management and labor."

JOSEPH STAGG LAWRENCE
Economist.

". . . the Federal government has gone far to adopt tax policies urged by the Communists for the United States but shunned in practice in Russia."

HARLOW SHAPLEY
Director, Harvard Observatory.

"As soon as it is emotionally possible, we should accept the principle that scientists are world citizens, serving all mankind, and working not for the past but for the future."

HARRY S. TRUMAN

"We are only on the threshold of an era of electrified homes and mechanical aids to better living. We can encourage this trend by using the bounty of nature in the water power of our rivers."

JOHN M. HANCOCK
Economist.

"Let's realize that jobs come from the consumer—all the people—and that in a democracy there can be no fairer plar, and that no group of planners can be as fair or wise as the whole body of our American people."

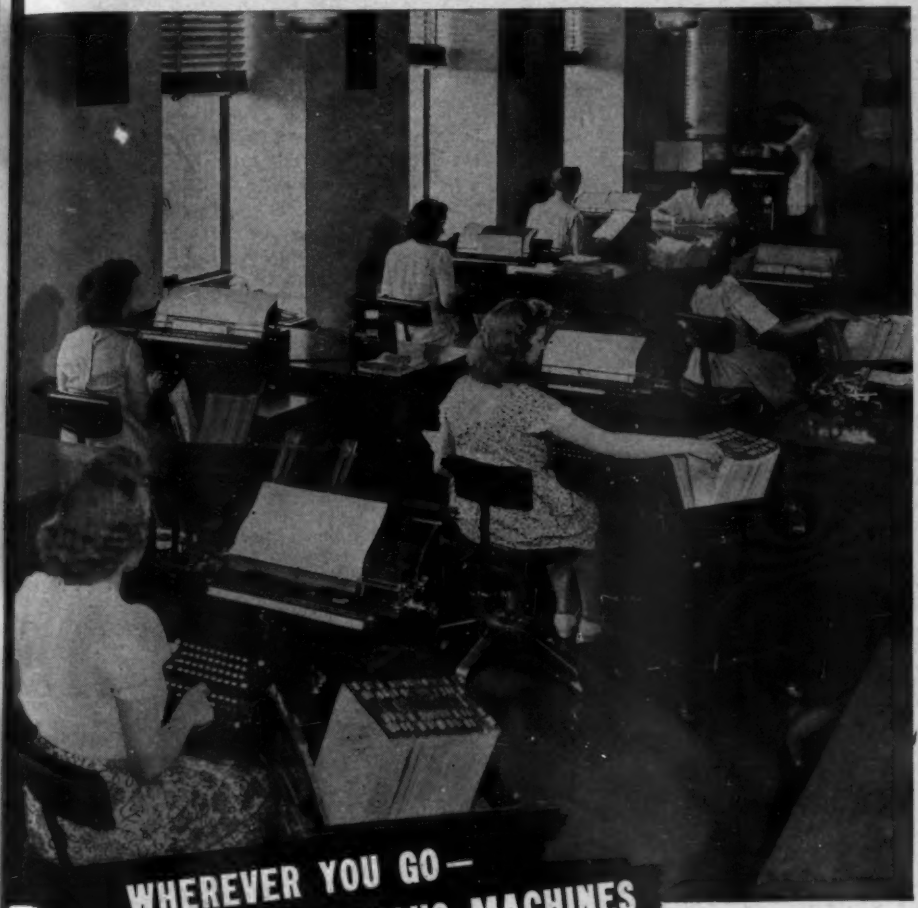
CHARLES E. WILSON
President, General Motors Corporation.

"The rule of reason must be substituted for the rule of force, especially when the public interest is at stake. Sound procedures for solving such problems must be worked out without jeopardizing the fundamental rights and responsibilities of all parties involved."

WALTER B. WEISENBURGER
Executive vice president, National Association of Manufacturers.

"Much that has been said and done by the administration in this reconversion period has been stimulating a return of the long-absent confidence of businessmen in a sensible political approach to economic stability. But careless commentators within the government, whether they speak officially or not, are psychologically going to have as much effect on reconversion, prosperity, and jobs as legislation."

• This installation of Burroughs Typewriter Accounting Machines at Purdue University, Lafayette, Indiana, is typical of thousands of offices throughout the nation that depend on Burroughs machines for fast, accurate handling of all types of accounting work.



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HOMER D. ANGELL
U. S. Representative from Oregon.

"Under the American system of private enterprise, if the incentive for gain is removed, industry dries up. There is no urge for one with idle capital to invest it in an industry which will provide jobs for the workers if the government seizes all profits and leaves the investor to worry with the losses."

VIRGIL D. REED
Economist.

"Industry and businessmen cannot count on the magic stimulant of rapid population growth to cure their ills or to offset mistakes in judgment. More decisions must be based on fact. Stationary or even decreasing population does not necessarily mean poorer markets, but will mean changes in the nature of demand."

DAVID LAWRENCE
Editor, The United States News.

"Some day governments will discover what more and more individuals are discovering every day; namely, that in penology the philosophy of tolerance and fair treatment—the very thing the Scriptures teach us—accomplishes more toward rehabilitation and reëducation than the lash or the threat of the lash ever did."

GEORGE E. SOKOLSKY
Columnist.

"In all the discussion over science now taking place in Congress, the very serious danger is already evident that government is about to harness science to its political chariot as it has already harnessed industry. Science cannot, however, become political. Neither a molecule nor an atom can be created by act of Congress."

STEPHEN WHITE
Staff member, New York Herald Tribune.

"The May-Johnson Bill, providing for Federal control of atomic energy, . . . grants to a 9-man commission the most far-reaching powers ever yielded by Congress and by the American people—powers so extensive that it is not difficult to imagine the commission becoming ultimately more powerful than the government that brought it into being."

HERBERT HOOVER
Former President of the United States.

"The whole gamut of science and its application has opened a new frontier to the expansion of American life. Whether we realize these great possibilities and all their train of social good depends upon the moral, social, and political climate with which these beneficent forces are surrounded. They can be crippled by a host of destructive actions."

GEORGE SANTAYANA
Excerpt from "Persons and Places."

"If any community can become and desired to become communistic or democratic or anarchical I wish it joy from the bottom of my heart. I have only two qualms in this case: whether such ideals are realizable, and whether those who pursue them fancy them to be exclusively and universally right: an illusion pregnant with injustice, oppression, and war."

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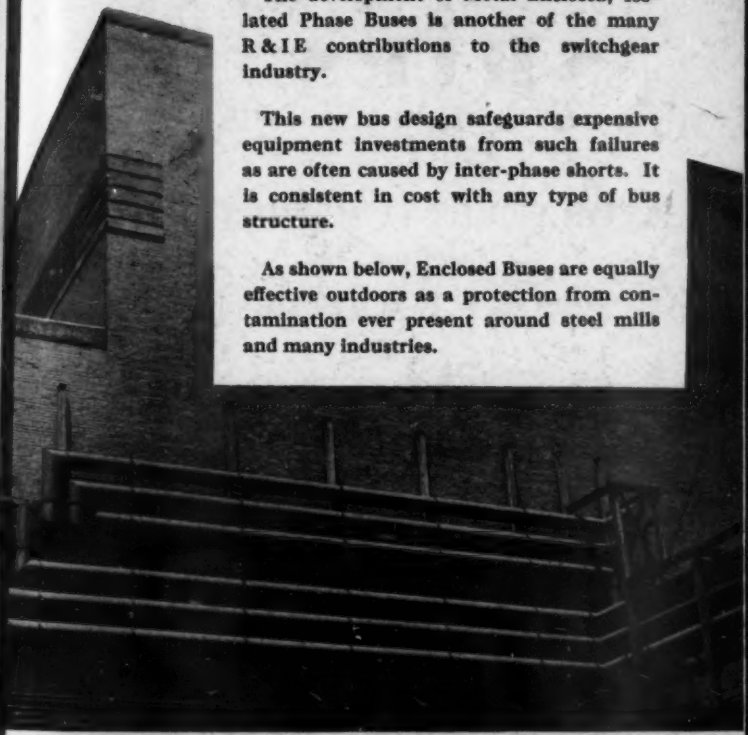

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- CUTOUTS AND THERMO-RUPTERS
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— and —
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NEWPORT NEWS SHIPBUILDING and DRY DOCK COMPANY

NEWPORT NEWS,
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THURSDAYS, C. B. S., 9 P. M., E. T.

4

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See your Dodge dealer Now! Let him help you choose the right Dodge Job-Rated truck for all your hauling needs!

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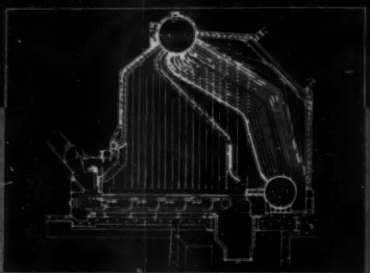
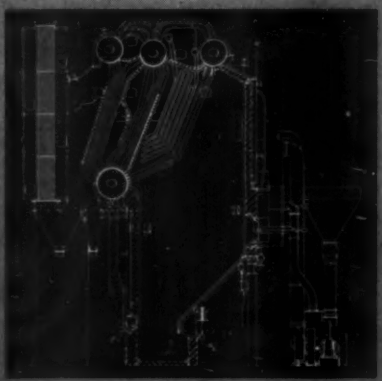


B&W INTEGRAL-FURNACE BOILER (CLASSES 9, 12, & 15) This Integral-Furnace Boiler is available for firing with stokers or with oil, and in sizes ranging from 1253 to 6806 sq. ft. of heating surface. Having a water-cooled furnace of special design, this boiler provides the dependability of central-station boilers, with efficient and smokeless combustion.

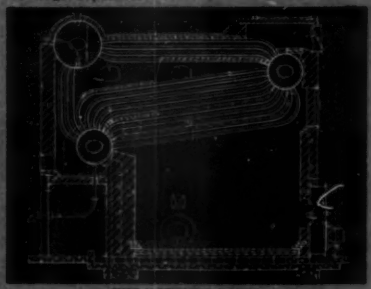
B&W DESIGN 32 CROSS-DRUM BOILER

This unit is widely used in small and medium-size power plants where refractory furnaces are suitable. It provides the advantages of the straight-tube, sectional-header construction used in B&W Cross-Drum Boilers designed for larger capacities.



STIRLING BOILER

The Stirling Boiler fully meets the requirements of modern operating conditions. It readily responds to sudden and heavy demands for steam, and delivers dry steam at relatively high ratings when operated with water having a high concentration of solids. May be fired with any fuel.



TYPE H STIRLING BOILER

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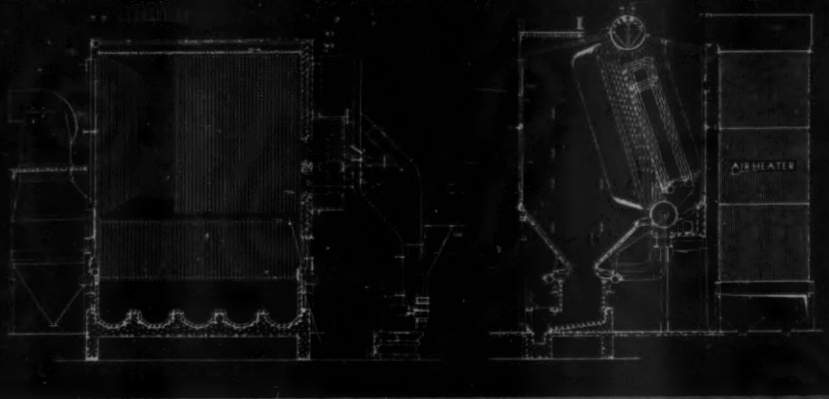

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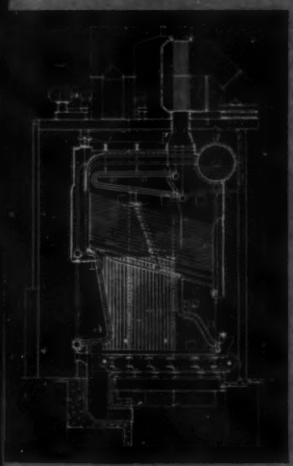

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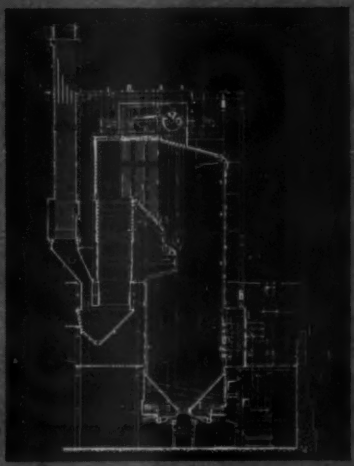

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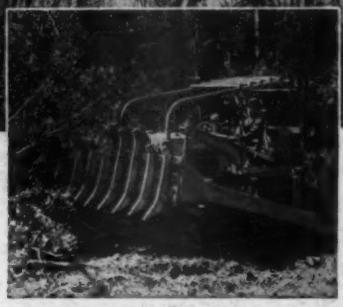

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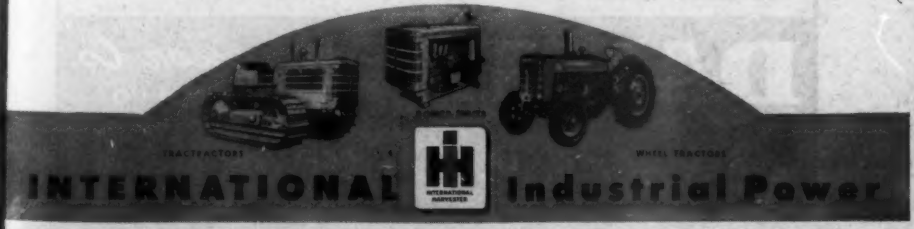

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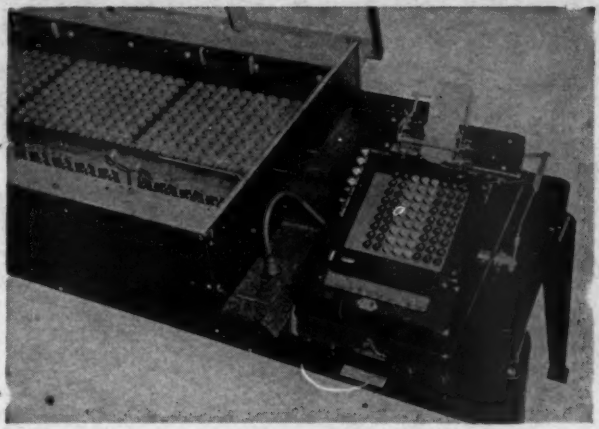

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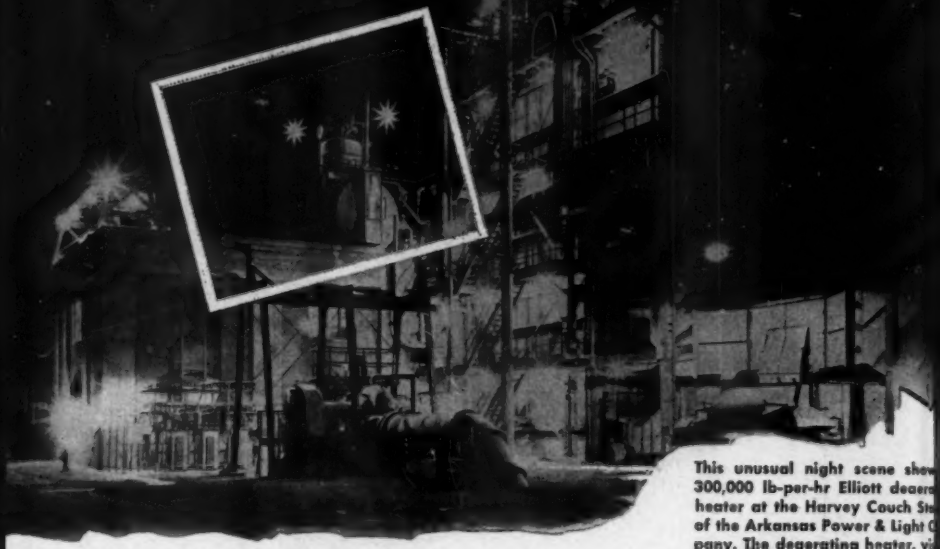

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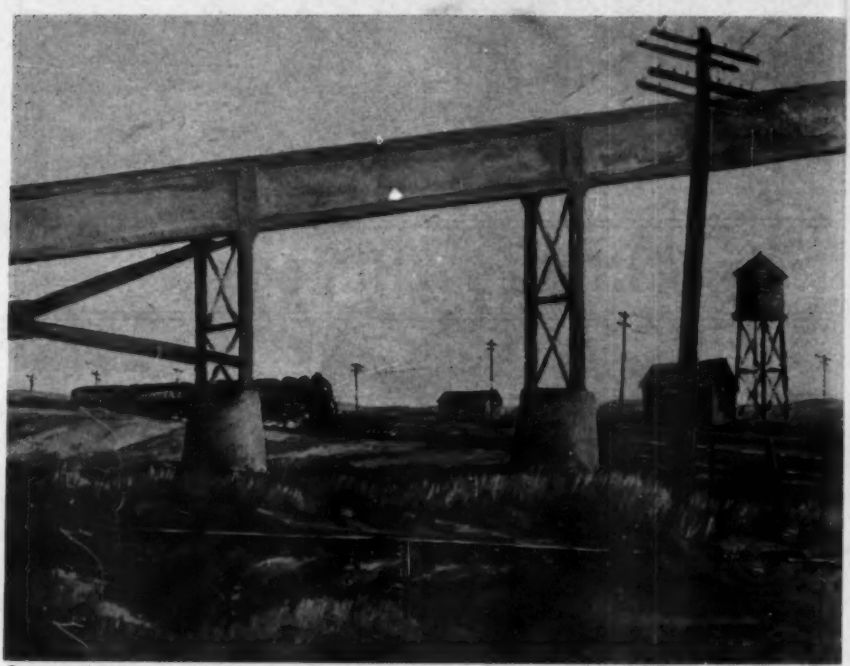
Utilities Almanack

JANUARY

3	T^h	¶ *New England Gas Association, Operating Division, will convene, Boston, Mass., Jan. 17, 1946.*
4	F	¶ *American Institute of Electrical Engineers will hold meeting, New York, N. Y., Jan. 21–25, 1946.*
5	S^a	¶ *Institute of Radio Engineers will hold technical meeting, New York, N. Y., Jan. 23–26, 1946.*
6	S	¶ *Independent Natural Gas Association of America will hold membership meeting, Houston, Tex., Jan. 28, 1946.*
7	M	¶ *Federal Power Commission will resume natural gas investigation hearing, Houston, Tex., Jan. 28, 1946.*
8	T^u	¶ *National Metal Exposition will be held, Cleveland, Ohio, Feb. 4–8, 1946.*
9	W	¶ *Exposition of Chemical Industries will be held, New York, N. Y., Feb. 25-Mar. 2, 1946.*
10	T^h	¶ *Southern Gas Association will hold session, Galveston, Tex., Mar. 21, 22, 1946.*
11	F	¶ *American Gas Association starts Southwest Personnel Conference, New Orleans, La., 1946.*
12	S^a	¶ *American Gas Association Conference on Industrial and Commercial Gas will be held, Toledo, Ohio, Mar. 28, 29, 1946.*
13	S	¶ *Kentucky Independent Telephone Association will hold meeting, Apr. 4, 5, 1946.*
14	M	¶ *Iowa Independent Telephone Association will convene, Des Moines, Iowa, Apr. 11, 12, 1946.*
15	T^u	¶ *United States Independent Telephone Association Executives' Conference convenes, Chicago, Ill., Apr. 16, 17, 1946.*
16	W	¶ *American Gas Association Distribution and Motor Vehicle Conference will be held, Chicago, Ill., Apr. 16–18, 1946.*



Courtesy of Montross Gallery *Elsie Hafner, N. Y.*

"Southern Express"

By Whitney F. Hoyt

Public Utilities

FORTNIGHTLY

VOL. XXXVII, No. 1 JANUARY 3, 1946

Washington Utility Outlook For 1946

An analysis of possible consequences of new developments and postwar reconversion trends on various utility industries during the new year.

BY FRANCIS X. WELCH

IT is not difficult to select the most important single event which happened in the year 1945. Despite the victorious conclusion of war with our two major Axis enemies, there can be little doubt but that the first demonstration of practical release of atomic energy overshadows these other events, as highly important as they were.

In fact, one leading public utility executive[1] recently ventured his own opinion that, for these three reasons, the year 1945 would go down in the annals as the most important single 12-month period in the history of mankind, with perhaps the exception of the birth of Christ. Yes, VE-Day and VJ-Day were landmarks in history, but the awful light which came from the explosions of Hiroshima and Nagasaki marked the beginning of an epoch.

Despite such a spectacular entrance, the transition to this new atomic era is not going to be abrupt. In the beginning, at least, its impact will be more or less psychological. Mankind

[1] Retiring address of John P. Boylan as president of the United States Independent Telephone Association, Chicago, October 2, 1945.

in business, in politics, and even in social activities, will think and act with the mere consciousness that we are on the threshold of the atomic era. But it will take years, even decades, for actual physical changes to make themselves apparent.

THUS the year 1946 dawns in a setting of vague consciousness, considerable uncertainty, and even fear of the new world which lies ahead. As far as the public utility industries are concerned, it is difficult to select a single facet of their multiple contacts with government which has not taken on a certain amount of new light as a reflection of atomic fission. This statement, at first blush, may seem extreme, but a little examination of major utility problems in Washington likely to arise in 1946 or hanging over from 1945 should indicate the presence of this indefinable new psychology. It is a psychology with which all major problems are being approached these days, often without those doing the approaching having any definite awareness of it.

Take, for example, the electric power industry's problem of coping with the rising tide of federalized public ownership. It would be hard to say, offhand, whether the perfection of atomic fission will have an ultimate net effect that will be beneficial or adverse to the chances of survival and prosperity of private enterprise in the electric power utility industry in the United States. On the one hand, the almost universal agreement, that the process involving atomic fission will have to remain subject to close government scrutiny and control, would seem to argue in favor of more public ownership if, as, and when (some years hence) atomic energy should spill over into the field of electric power generation. On the other hand, and more obvious and immediate, is the fact that the comparative imminence of such an event (variously estimated from ten to fifty years away) should, of itself, mitigate against huge expenditures in vast *new* hydroelectric power generating facilities, part of which would be designed to last one hundred years or more and the cost of which alone (under the law) would take fifty years to amortize. So, while we don't know now just which way the cat will jump, it would be most unwise to dismiss the promise of atomic energy as having no effect on present planning in the field of government ownership.

GETTING down to specific cases, we even seem to be witnessing an attempt on the part of the Bureau of Reclamation to rush its public power planning and construction to completion at earliest possible dates. Nobody has admitted as much, but those with an eye to see and ears to hear around Washington well know that the shadow of atomic energy has fallen across many ambitious plans of the public power enthusiasts. They are obviously afraid to talk about this shadow out loud, or even admit it to themselves. Some deny that it even exists in day-to-day conversation. But the shadow is there. The full speed ahead and hectic activities around the Reclamation Bureau these days, to promote the most public power at the earliest possible date, at least give rise to the reasonable suspicion that bureau officials are taking no chances that the next couple of years may be the "last

call for dinner" on liberal government appropriations for hydroelectric expenditures.

The idea seems to be to get the bureau's plans nailed down over the widest area with the fullest financial commitments—before some of the less alert minds in Congress wake up to the fact that these plans involve the risk of terrific losses through technological obsolescence within a matter of a decade or two after their completion.

There can be little doubt that the Interior Department, as presently organized, has as its ultimate objective running private enterprise completely out of the power business in the Far West. Over a year ago, at a conference of regional directors of the Bureau of Reclamation in Denver, Colorado, H. F. McPhail, director of the bureau's power utilization division, made the following significant statements:

> The business of the Bureau of Reclamation is the promotion of the development of the West. Primarily, this is done through the development of irrigated lands. However, the possibilities do not end there. A great deal can be accomplished by making low-cost power available to the greatest number of consumers. . . . Under the 1939 Reclamation Act preference must be given to municipalities and other public corporations or agencies, and also to coöperatives and other nonprofit organizations financed in whole or in part by loans made pursuant to the Rural Electrification Administration Act of 1936 and any amendments thereof. These principles should be *strictly* adhered to and such preferences given wherever possible. . . .
>
> All regions are in serious need of well-developed programs and plans for power developments, transmission-line installation and extensions, and substation installations and enlargements. Plans should be developed which will permit *piecemeal* construction as conditions warrant, but which will finally result in a coördinated system of proper characteristics to supply the foreseeable needs of the area. In order to achieve this objective, market studies should be immediately instituted which will cover thoroughly all areas now being served or which may be served in the future as regional development proceeds. . . .
>
> To achieve the maximum good and to best insure full development throughout the area in which the Bureau of Reclamation operates, the bureau should *now* assume the responsibility for supplying, in so far as possible, all additional power needs wherever it has present and potential possibilities for the generation and transmission of the needed power. Past experience has shown that whenever fuel-burning capacity is installed by others in an area in which the bureau operates power facilities, the United States, in one manner or another, must pay the cost of such capacity. Ordinarily this has been accomplished by a reduction in rates for such power as is required to *displace* that which could have been generated by the fuel-burning capacity. Such situations should be *avoided* in the future, so far as possible. This can only be done if developments are made sufficiently ahead of requirements so that the market can be supplied as it develops. Efforts should be made in all regions to see that this objective is accomplished to a maximum degree.
>
> In order that the benefits of low-cost government power be most widespread, it is desirable that the bureau own and operate all transmission facilities. In this connection, transmission facilities are viewed as voltages from 33,000 up. It is believed that most efficient operation can be attained by the bureau's also owning and operating all substations stepping from transmission voltage

❦

¶ "We *can expect more outspoken defense of the public utilities generally on behalf of their position in 1946 than ever before. The recent establishment of the National Association of Electric Companies, in Washington, D. C., has already demonstrated a more forthright attitude among utility companies which feel they have been pushed around for more than a decade and if they do not stand up for their rights now they may be pushed right out of the picture.*"

down to distribution voltage. (Italics supplied.)

It ought to be pretty clear that, if these plans are carried out, the bureau, a decade or so hence, would be able to write off its obsolete generation, if such obsolescence occurred, and still be pretty much in the power business through the control of transmission and distribution facilities.

OUR first prediction for 1946 might be ventured against this background. There is increasing consciousness in certain sections of Congress that the Interior Department is embarked on this venture of public ownership of power for public ownership's sake. This was seen in the recent First Deficiency Appropriation Bill, which cut out certain items in the bill, as it passed the House, for market surveys and transmission lines in the Missouri valley, in the Fort Peck area, and to some extent in the Central valley, California.

On the other hand, it would authorize the bureau to build a line from Oroville to Sacramento which will enable the bureau to bring Shasta dam power over the line which it built without congressional authority from Shasta to Oroville over a year ago. More important than these excisions of relatively small items was the statement of policy contained in the House Appropriations Committee report. This policy statement consists of a single sentence: "In connection with denial of funds for power market and transmission line studies and surveys, the committee has taken the position that these funds should not be used for constructing transmission lines to market power."

The House committee's policy statement—although finally offset by congressional action favoring appropriations for more distribution lines—could easily become significant as the nucleus of the first definite and decisive congressional thinking on the important issue of whether the Federal government should be permitted to go into every phase of the electric business without restraint. If this thought is carried over into future legislation—and there seems some disposition on the part of the House committee to do that very thing—it would strike at the heart of many ambitious plans for enlarging public power operations now being formulated and perfected, particularly in the Interior Department.

The obvious prediction, therefore, is that the Bureau of Reclamation will keep up its race to develop power in the West and also along the Missouri valley, in collaboration with the Army Engineers. The purpose of this race is to be in a better position when the inevitable showdown comes in Congress on just what its ultimate public power objective is in the West. The bureau has never officially and clearly admitted that it wanted to annihilate private enterprise in the power industry, but it is difficult to see how much longer the denouement of this masquerade can be postponed. It may not actually come in 1946, but it is quite likely to.

TWO of the reasons why the showdown may come earlier than expected are (1) the reclamation interests who are becoming bitter about reclamation being put on a stepchild basis in favor of public power development; (2) the House version of the Full Employment Bill which would an-

Predictions of Events for 1946

(Here is a summary of the things likely to occur in Washington of special concern to the public utility industry.)

1. Reclamation will plunge ahead on public power development to offset growing restlessness in Congress over public ownership for public ownership's sake. The shadow of eventual technological obsolescence is in the background.
2. The MVA Bill looks pretty dead; CVA and other authority bills not much better.
3. Outlook for St. Lawrence project enactment is poor and 1946 may be the bill's last chance.
4. Congress may let the big surplus war pipe lines go to the gas companies.
5. FPC will recommend stronger Federal conservation policy on natural gas; but Congress may not follow suit.
6. Agitation early in the year for rate reductions; late in the year for rate increases —not much net change.
7. Departmental reorganization is likely for the REA and possibly for the FPC—pursuant to recent legislation.
8. No Federal rural telephone legislation; but more intensive progress on the rural problem by the telephone industry itself.
9. Renewed agitation for reform and revision of the Holding Company Act, the Federal Power Act, and discriminatory taxes; but Congress may delay action.
10. Supreme Court will uphold constitutionality of the Holding Company Act; but check cost accounting practices of the FCC.

nounce an over-all policy of protecting private enterprise in the appropriation of any new funds for public works.

Taking a hasty look elsewhere around the public power field, the year 1946 does not seem to be designed to develop anything spectacular in the way of new proposals. The St. Lawrence seaway-power pact will be revived, of course, but the chances are that it will once more be stalled in Congress on the technical question of whether it really involved a treaty (requiring two-thirds ratification by the Senate) or a simple agreement, requiring only a majority vote of both chambers. President Truman attempted to help the St. Lawrence plan in legislative maneuvers some months ago to split the thing in two parts. But it is not clear at this point that the situation has been helped very much. And delay could be fatal to the St. Lawrence program. The sands of time run against it. Once more we have the shadow of technological obsolescence, although this time not entirely traceable to the atom.

Proponents of St. Lawrence seaway-power plans are worried over the possibility that if there is much further delay in bringing the proposal to a vote, a strong case based on the prospect of future revolutionary transportation techniques may make Congress

hesitate to go ahead with major public spending for waterways in this direction at this time. Waterway advocates, generally, are concerned over the possibility that war-inspired improvements in air transport (super planes, jet propulsion) might cloud the chances for costly plans to expand water-borne transportation of passengers and property. But with the definite prospect that much of the present long-haul passenger load will be lost in the future to both railroads and steamship companies, the idea of subsidizing further competition with the railroads by constructing waterways at public expense is losing appeal.

To put it pretty bluntly, there is the feeling around Washington that the steamship is already largely obsolete for transoceanic passenger travel in the light of prospective airplane competition. While the proposed seaway was always thought of primarily as a scheme for moving freight rather than passengers, the plight of the railroads in the postwar future may even forbid this extension of inland waterway competition if we are determined to keep our railroads in a solvent condition for operation.

THE Missouri Valley Authority plan came in like a lion and went out like a lamb in 1945. And there is little to indicate that it will take on any new vigor in 1946. In fact, some of its own supporters are deserting the idea and even President Truman seems to be hedging a bit. This, despite his stout advocacy during the weeks following the death of the late President Roosevelt. As already suggested, the Interior and Army Engineers are losing no time going right ahead with Missouri river development work, so we can make our third prediction at this point, that if MVA doesn't show some unexpected signs of life during 1946, it will be a dead issue.

We can't be so sure that the same is true of the proposed Columbia Valley Authority, because that mostly involves a paper reorganization of administrative controls for a project which is already pretty well physically established. Prospects do not look any too good for CVA during 1946, for that matter. But we cannot consider it a legislative Siamese twin of MVA, whose death would necessarily follow the end of the latter.

We come now to the natural gas field in which the Federal Power Commission looms pretty large in the picture. Its current investigation has now gone through somewhat more than half of the hearing stage. The developments to date are rather inconclusive. The FPC started this investigation upon the assumption that it had no control over the "end use" of natural gas at the consumer's end of the pipe line. In fact, it was the general impression that the very purpose of the investigation was for the FPC to develop sufficient ideas and data on that point and on the conservation angle generally, so as to make suggestions to Congress if the latter should be disposed to revise the Natural Gas Act.

Yet, last month, while the New Orleans hearings were still in progress, FPC refused, in the case of the Northern Natural Gas Company, to authorize the construction of a short extension to serve an electric power company which wanted to use it for boiler fuel to generate electricity at Boone, Iowa. The decision, on its face — cited,

among other things, the amount of coal which would be displaced if natural gas were permitted to be used. This certainly seemed to base the denial on the inferior use which the consumer planned to make of the natural gas.

If so, here was the FPC assuming jurisdiction over a subject matter during the middle of an investigation to find out whether it should be given jurisdiction over that matter.

In all fairness, there appears to be confusion as to whether the Northern Natural Gas Case actually meant what it said or seemed to say. If the FPC intended it to be a precedent for the authority that it would deny (under the Natural Gas Act as presently written) the right of a gas company to serve a consumer for boiler fuel use, it needs clarification. After all, it was a relatively small case and it would take a more clean-cut opinion to demonstrate such assumption of FPC jurisdiction. (See, also, page 55.)

But even this degree of uncertainty, added to numerous other reasons for uncertainty, may have some bearing on the attitude of Congress in disposing of Big Inch and Little Inch pipe lines. These surplus pipe lines, which the oil companies no longer want to operate, could be converted to use by the natural gas companies. Furthermore, both the natural gas companies and the oil pipe-line companies have good reason to fear that if the Federal government hangs on to these pipe lines, year after year, there may eventually ferment a demand for direct government operation. There is some precedent for this supposition, in view of what happened to the Muscle Shoals "hang-over" from World War I, which eventually blossomed into the Tennessee Valley Authority. And, incidentally, the aluminum and magnesium industries have something to worry about along this line—especially of aluminum plants which, during the war, accounted for so much of the power output of Bonneville and other public power plants.

But coming back to the Big Inch and Little Inch, if one or both of these pipe lines were to be turned over to the transportation of natural gas from the Southeast and Southwest fields to the consumer areas on the eastern seaboard to supplement the diminishing reserves in the Appalachian region, it would mean that much more and faster exploitation of the known natural gas reserves in producing areas.

During the FPC natural gas investigation, Louisiana and, to some extent, Texas have complained most bitterly about this exportation which these producing states would rather keep at home for the development of local industry. It also has aroused powerful opposition on the part of coal interests, including mining unions. And so, if FPC is disposed to exert jurisdiction

¶ "The *Bell system in collaboration with the FCC has already announced a $20,000,000 long-distance rate reduction, effective February 1, 1946. That is likely to prove a convenient lightning arrester for further agitation for lower Bell sysem telephone rates. . . . In other respects, the forthcoming year looks pretty quiet for the telephone business.*"

over consumer use of gas, or even if it is disposed to ask Congress for such jurisdiction, we get a big jurisdictional question mark on the wisdom of turning over the pipe lines, even before Congress has had a comfortable opportunity for examining and answering for itself the main economic question and collateral financial questions.

And here, again, we have in the background the shadow of eventual possible use of atomic energy. The shadow suggests that true conservation of natural gas or any other natural resource is sensible utilization within the useful life span of that resource. If, as the evidence before the FPC indicates, we have from thirty to sixty years' supply of natural gas, even assuming expanded markets (various estimates), and the fair possibility that, within a decade or more, the use of atomic energy might be developed to replace other fuels, then it suggests a more realistic conservation policy on the part of the FPC (or any other agency having the responsibility for a conservation policy).

In plainer words, why not let more people have full benefit of more natural gas while natural gas still has a desirable "use value," instead of hoarding it against a time when it might not be worth even the price of transporting it away from the production area in the light of other competitive fuels?

So we venture here a further prediction that, after some preliminary skirmishes over possible irregularities in the construction of the big surplus pipe lines, a strong effort will be made to have Congress release them for some form of private enterprise, preferably natural gas transportation. Also, while the FPC may recommend as the result of its investigation that Congress should give it more definite authority over natural gas conservation, including the control of end use, Congress will not take action in 1946 and will probably want a pretty complete blueprint of what FPC proposes to do with its jurisdiction before it ever grants the commission such authority.

We come now to the field of regulation. The year 1946 promises to be a rather busy one. At the very outset we have before the U. S. Supreme Court two important matters. One of these is the New York Telephone Company Case, involving the right of a Federal commission to order a utility company to keep its books *retroactively* on a cost basis so as to eliminate a profit for its parent company which was lawfully accounted for at the time the entry was made. If this decision goes in favor of the company, and this writer thinks the chances are close but slightly favorable for that result, it will probably mark the first time a Federal commission has taken a reversal from the Supreme Court in a long series of accounting cases.

Also due for a decision in January were the consolidated "death sentence" cases involving four different holding companies ordered to be broken up by the Securities and Exchange Commission under the Holding Company Act of 1935. After the long delay in getting these test cases to trial, a decision in favor of the companies, even to the extent of invalidating the death sentence provision (§ 11) in whole or in part, could only come as an anticlimax at this time. Reorganization plans have already proceeded so far that all

Predictions by This Author in 1945

(Eight of the following ten predictions by Mr. Welch one year ago occurred as forecast.)

1. St. Lawrence project would be revived but not enacted (right).
2. An MVA Bill introduced but not enacted (right).
3. Bills to establish other "authorities" to follow MVA fate (right).
4. Much public ownership publicity, but no new projects authorized (right).*
5. REA would get congressional criticism—also more funds (right).
6. No rural telephone legislation in 1945 (right).
7. FPC would stage a broad natural gas investigation (right).
8. FCC had a good chance of being reorganized by law (wrong).
9. No action on other regulatory bills in Congress (right).
10. No important Supreme Court decision in 1945 (wrong).†

*Items in the recent First Deficiency Bill had generally been authorized in previous legislation.

†The Canadian Gas decision, throwing doubt on the Hope Case, was certainly important.

the power and majesty of the courts, as a practical matter, could hardly put Humpty Dumpty back up on the wall again.

This observer is inclined to believe, however, that the SEC will be victorious in all four cases, in whole or in part. There will certainly be, however, some split decisions and arousing opinions by individual members of the court.

In the general area of utility rate fixing the year 1946 finds state commissions agitated by the fact that the removal of excess profits taxes may give rise to further demands for rate reductions. There are almost certain to be cases started along this line. Some voluntary reductions are likely to accrue. In other cases, utilities will try to show loss of earnings from the cessation of heavy war load and other circumstances which would justify a retention of utility rate levels.

OVER the longer run—perhaps late in 1946—we may even expect the creeping inflation already apparent on every hand to bring forth some scattered demands for rate increases, particularly among the small independent telephone companies which are already suffering under present rate levels from increased operating expenses in the form of higher prices, materials, and higher wages.

By and large, however, this observer does not expect the general utility rate

picture to change drastically in 1946. The pressure for reduction in the early part of the year, already noted, is quite likely to be offset by the inflation pressure towards the end of the year. Only a crystal gazer could attempt to say what the inflationary picture is going to be after that. But it is clear enough that if every item in the utility's operating expense, except perhaps taxes, continues to rise, rates certainly cannot go down and may eventually even have to go up. There is not much mystery in that prognosis.

We can expect more outspoken defense of the public utilities generally on behalf of their position in 1946 than ever before. The recent establishment of the National Association of Electric Companies, in Washington, D. C., has already demonstrated a more forthright attitude among utility companies which feel they have been pushed around for more than a decade and if they do not stand up for their rights now they may be pushed right out of the picture. Certain things said earlier in this article would indicate there is some basis for such assumption.

But, in any event, Congress is already surprised at the unusual picture of utility companies actually appearing on Capitol Hill in their own behalf and to seek for the end of discriminatory legislation. It has met with some success, too. The Poage Bill in the session of Congress recently closed (to increase the lending authority of the Rural Electrification Administration by more than a half-billion in the next three years) has been stalled in the House Interstate and Foreign Commerce Committee. This has occurred principally because of arguments which have given the Congressmen something new to think about in connection with REA activities. There is a chance that the Poage Bill may not even pass, or, if it does, the total new lending authority may be somewhat curtailed.

It is too soon to estimate the effect of recent testimony before the Boren subcommittee of the House Interstate and Foreign Commerce Committee to bring about amendments in the Holding Company Act. But it is a pretty safe prediction to say that the subcommittee, at least, is likely to recommend certain amendments, particularly to head off abuses in the acquisition of utility properties orphaned under the Holding Company Act by improper financing methods. But it is probably equally safe to say that Congress is likely to pass no such legislation in 1946. It would seem to take a longer steaming-up period to accomplish such a substantial reform. The same thing goes for other current agitation to remove tax discrimination, such as the whole or partial tax exemption now enjoyed by public ownership groups and coöperatives. The coming year will witness a lot of steam, but any resulting action is more likely to go over until after the 1946 biennial elections. And while we are about it we can put several of the bills sponsored by the state commissioners to limit the jurisdiction of the FPC in the same category.

One final word about the communications companies. The Bell system in collaboration with the FCC has already announced a $20,000,000 long-distance rate reduction, effective February 1, 1946. That is likely to prove a convenient lightning arrester for further

agitation for lower Bell system telephone rates during 1946. In other respects, the forthcoming year looks pretty quiet for the telephone business.

Several bills to authorize Federal loans for rural telephone purposes (two of them through REA) are sleeping peacefully in Congress and not likely to emerge. The telephone industry can be depended upon to give its attention to the rural telephone problem in 1946. The recent announcement of a trial installation of so-called "carrier telephones" on REA lines in Jonesboro, Arkansas, is a good indication that the industry wants to whip this problem itself and as quickly as possible to forestall even the need for direct Federal intervention. The signs are plentiful that both the Bell and independent systems are making fair progress in this direction.

ONE last word about possible reorganization of Federal agencies dealing with utilities. The recently enacted government reorganization bill surprisingly left the Federal Power Commission subject to government reorganization under any broad plan which President Truman cares to submit. Such a plan would become effective unless vetoed within sixty days by both branches of Congress. No reports have been prevalent that the President might have some idea of putting the FPC under the Commerce Department or Interior Department, or otherwise changing its independent status. Yet, when the Senate included the FPC among agencies exempt from the bill, the conference took it out, so there is a good chance that at least somebody has some further plans for the FPC.

The FCC is left partially exempt, to the extent that the President would have to submit an independent plan; it could not be reorganized as part of a general plan. Three other regulatory agencies are entirely exempt: the Interstate Commerce Commission, the SEC, and the Federal Trade Commission; also, the civil functions of the Army Engineers. The REA, of course, is subject to such reorganization, and rumor has it that REA is quite likely to be an important part of any such over-all plan.

"FOR *years the CIO and the UAW have advocated industry councils composed of government-management-labor representatives to 'determine and put into effect' production and other noncollective bargaining programs on an industry-wide basis. What reason is there to believe that industry-wide bargaining would stop with wages, hours, and working conditions when 'a voice in management' is already a major union objective? No one has explained how decentralized competitive industry can bargain collectively with centralized monopolistic industrial unions without losing the individual freedom and responsibility on which competitive enterprise is based.*"

—GEORGE ROMNEY,
General manager, Automobile Manufacturers Association.

Leaders in a New Era of Electric Service

With a strong faith in the future of free enterprise and an awareness of the responsibilities entrusted in them as the heads of public service enterprise, says the author, these men continue to give every indication and assurance that the public utility business is more than just an industry; it is a public trust.

By JOHN P. CALLAHAN

When the Public Utility Holding Company Act became law in 1935, close observers of the electric light and power industry's leaders rightly described their passive acceptance of this measure as clear evidence of executive apathy. Many considered passage of the act an indication of disunity within the industry and declared that any other industry would have voiced loud and successful protestations to Congress to what frequently has been termed the most onerous piece of legislation ever placed on the statute books.

Its passage proved conclusively that the industry was too long in an old-school frame of mind: The leaders were aloof; they were too far removed from an awareness of their public position. And the New Deal took this political occasion to impose the burdensome restrictions of the act which have since cost the industry millions of dollars in legal fees alone, to say nothing of the "incidental" costs and time spent in and out of the courts and the offices of the Securities and Exchange Commission.

Currently, a securities subcommittee of the House Interstate and Foreign Commerce Committee, headed by Representative Lyle H. Boren, Democrat, of Oklahoma, is conducting hearings which may result in amendments to the act.

These hearings have had the constructive effect of arousing electric light and power men to an aggressiveness of action that is remarkable in its degree of unity. Nothing compar-

able has ever brought about the singleness of purpose which has characterized preparation for these hearings.

Had the impossible occurred and the committee asked the industry when it would prefer to air its objections to the act, the industry could not have selected a more propitious time. The turnover in leadership in the industry during the past decade has been marked with younger successors who have witnessed vigorous application of the stifling provisions of the act. It has given them ample time to study and observe closely the public disadvantages inherent in many provisions of this highly controversial piece of legislation.

Appearance of witnesses from operating companies during the early part of November has given concrete evidence of their ability to present testimony that has every indication of furnishing the committee with information which, when presented to Congress, will result in changes in the act. As Kinsey Robinson, president of the Washington Water Power Company, said recently after appearing as a witness before the Boren Committee, "it (the act) is about the only major piece of legislation which has ever remained on the statute books for more than ten years without being amended."

It is more than mere conjecture to say that the predecessors of these witnesses would not have done as good a job; their infrequent and reluctant appearances before congressional committees and Federal, state, and local regulatory bodies invariably resulted in further strained relationships because they were inherently opposed to "transgression by government bureaucrats," as the former head of a large utility company recently put it.

Today's younger leaders, however, have learned to accept Federal regulation, limiting their efforts to seeking intelligent modification of existing measures and offsetting imposition of others which would not be in the public interest.

The ascendancy of a new type of executive, already proved capable of recognizing and coping with problems which might test the patience of the old school, has been a distinguishing characteristic of the industry during the past ten years. Perhaps their ability to handle the maze of regulatory control that has beset them is explained by the fact that their predecessors had the unenviable job of receiving the first shock that accompanies "intrusive interference" with an industry; the younger executives had the advantages of witnessing application of the act and watching administration of it by the SEC from a semiacademic position.

Another outstanding characteristic of the new, younger type of leader in the utility industry is his awareness of the consumer. He is very conscious of the importance of harmonious relationship with the people to whom his company renders service.

When the industry began its growth more than fifty years ago, the demand for electricity was so great that management soon began to ignore the individual; preoccupied with expansion, little attention was given to the so-called little things like adjusting or explaining bills which the customer thought incorrect. Invariably, such matters, if investigated thoroughly, revealed that the company was right in

its meter reading, for example. But the manner of handling such cases was wrong. The consumer was told, in some cases, that he had no alternative but to pay the charge or cancel his contract.

Such customer relations had but one effect: It created enmity and a suspicion of big business that is still extant in many cities, though diminishing, as a result of concentrated efforts to improve customer good will.

Few of the chairmen and presidents in the industry today came from outside the field, and most of them, equipped with an engineering background, have risen from the ranks.

FOLLOWING its first period of expansion, many founders of this third largest industry developed an aloofness to public service beyond that rendered as incidental to the continuation of their empires. It was this attitude, more than any other single factor, that brought about eventual strict control and regulation by Federal, state, and local regulatory authorities.

Admittedly, the founders earned the world's gratitude for their contribution to the development of a service that is now a vital necessity. But it is to their successors during the past ten years or so that full credit goes for the high degree of efficiency and service which typifies the public utility industry today.

One of the first utility men to dispel the old-school theory that the "closed door" policy was the right one to be pursued was the late Wendell L. Willkie, who served as president of the Commonwealth & Southern Corporation from 1933 to 1940.

Prior to that time, many utility executives conscientiously pursued anonymity, with the result that public ignorance of a company's activities frequently led to misinterpretation of subsequent disclosures which, because of their direct interest to the public, could not be withheld.

Press relations, which can go far to further the success or failure of any enterprise, have been considerably improved by the simple practice of disclosing the company's activities when they concern the public. Avoidance of this obligation can prove costly both to the management and the public which is composed of customers and stockholders. Mr. Willkie was among the first utility men to prove this point and his frankness with newspaper reporters went far to give him a "good press" during hearings before the SEC and other Federal agencies prior to the sale of his company's Tennessee properties in the late thirties to the Tennessee Valley Authority.

Instead of fostering, by inarticulateness, a disgruntled press, he gained not only its good will but also, through his willingness to be helpfully informa-

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tive, an intelligent presentation of his company's affairs.

WHILE there has been no such display of shortsightedness with respect to publicity as was manifest some years ago, there is still a small group of utility company men who continue to display a reticence to meet with the press openly and recognize and respect its integrity. Obviously, as in dealing with other humans, such action can be detrimental.

Coming now to the men who are representative of the new leadership in the nation's $13,000,000,000 electric light and power industry, one is impressed, after research, with the list of names which are worthy of inclusion in any article written for that purpose. It becomes, therefore, not a problem of selection of personalities, but a matter of coping with the war-born headache of space limitations due to newsprint shortage. That the industry has an abundance of talent is a singular tribute to it and one which augurs well for its future.

AN example of the new school of thinking in the industry is extant in the largest of all utility systems, the Electric Bond and Share Company. Headed by a team composed of Curtis E. Calder, chairman of the board of directors, and George G. Walker, youthful and aggressive president of the system, this organization is a model of efficient management.

With Bond and Share looking to an industrial, as well as a utility future, Curtis Calder's background fits him uniquely to further the company's success. With a lifetime of service in the utility business both in the United States and abroad, his outside interests cover a wide range of industrial and social activities. In addition to serving on the boards of many of the country's largest business enterprises, including Lehman Corporation, the National City Bank, United States & Foreign Securities Corporation, the American Bank Note Company, and Selected Industries, Inc., he was director-general of the War Production Board in 1943, a public governor of the New York Stock Exchange from 1939 to 1941, and U. S. delegate to the International Business Conference held in Rye, New York, during 1945.

MR. WALKER joined Bond and Share in 1924 after graduation from Harvard University. His experience in management dates back to September of that year when he entered the system's rate department and spent most of his time, up to February, 1927, with the Florida Power & Light Company, a Bond and Share subsidiary. During the next eight years he was assistant to the executive vice president, subsequently becoming head of a group of company departments. In 1940, Mr. Walker was operating sponsor for the so-called "valley properties"—Arkansas, Louisiana, New Orleans, and Mississippi. In 1941, he was elected a vice president and director of Electric Bond and Share, which position he held until his election to the presidency in November, 1944. Surrounded by personalities who are well schooled in the operations of this vast system, Mr. Walker is also actively engaged in the monumental task of adjusting the system's structure in compliance with the Public Utility Holding Company Act of 1935.

Obsolescence of Management

"NOWHERE *can one find what someone recently called 'obsolescence of management' in the [electric] industry. If there is any, it has not yet been reflected in the operations of an industry whose record during the past five years has won unlimited praise from war manufacturing centers which depended so heavily on the electric power that 'never was too little or too late.' That the industry needs just such leadership today is apparent in the plans now being made for an unprecedented era of expansion.*"

ANOTHER outstanding figure in the Electric Bond and Share Company system is Edgar H. Dixon, head of the Electric Power & Light Corporation since August, 1944. Much of the credit for the exceptionally harmonious relations between Electric and the public utilities division of the SEC goes to Mr. Dixon. Hard working, and possessing the calm which is requisite for the able executive, Mr. Dixon devotes ten to fifteen hours a day to his duties, betimes shuttling between his office and those of the commission in Philadelphia. He joined Bond and Share in 1922, rising from cashier, a position he attained after studying finance at New York University, to secretary and treasurer of Electric in 1935, executive vice president in June, 1944, and the presidency two months later.

Shortly to emerge from one of the most complicated reorganization proceedings ever to beset counsel and the courts, is the General Public Utilities Corporation, successor to the Associated Gas & Electric Company and the Associated Gas & Electric Corporation.

AT its head will be A. F. Tegen, an outstanding example of the aggressive, forward-minded utility men of the day. With Mr. Walker, Mr. Tegen shares the distinction of being among the youngest executives in the industry. Both are in their early forties.

A graduate of Wisconsin University, where he majored in public utility economics, Mr. Tegen joined the Wisconsin Electric Power Company in 1924. For his simplified presentation in 1931 of a "Primer on the Light and Power Industry," Mr. Tegen won the Henry L. Doherty

Prize of the National Electric Light Association. In the following year, he was the winner of the Martin Insull Prize for a plan for presenting the industry's story to the public—a key to his awareness of the importance of cultivating good will with the public which buys the industry's service. In 1935, having gained national recognition in utility circles, he joined the newly organized SEC staff set up to administer the Holding Company Act and became a senior financial analyst. He became a trustee of AGECO and AGECORP in 1938, shortly before reorganization of the system began. In September, 1941, he was elected president of the Associated Electric Company, a subholding company with a large debt structure.

MR. TEGEN was largely responsible for the retirement of this subsidiary's debt and the sale of small and widely scattered properties. Subsequently, he merged several smaller companies in western Pennsylvania into the Pennsylvania Electric Company and recapitalized it on a conservative basis which enhanced that company's earning power. An indication of his ability to cope with what appeared to the layman to be an almost unsurmountable obstacle, an investor who held $26,000,000 of Associated Electric bonds said recently that "Tegen complies (with the act) at a profit." At the time Mr. Tegen assumed trusteeship of Associated Electric, the company's bonds were selling in the low forties. They are now selling at par. After a petition for consummation of the plan of reorganization of AGECO and AGECORP into General Public Utilities is filed with the court, Associated will become extinct and General will emerge a well-knit system headed by a man whose past performances indicate an outstanding career at the head of one of the country's best-managed utilities.

The United Corporation, once described by a phrase coiner in the SEC as a "multitiered monstrosity," is another example of an organization that has survived compliance with the Holding Company Act and appears by present indications to have a bright future, despite the turbulence of its past.

RESPONSIBLE for the successful emergence of this company out of the "death sentence" trials is William M. Hickey, described by associates as one of the keenest utility company specialists in the nation. He was technical adviser to utility operating and holding companies since 1927 when he graduated from the Harvard Engineering School with the degree of Bachelor of Science in electrical engineering and joined Stone & Webster.

Mr. Hickey has probably appraised more electric properties and appeared before more state public service commissions than any other expert in the field. He joined the Central Hanover Bank & Trust Company of New York in 1930 and for four years was head of a group in the bank's trust department which investigated and analyzed public utility securities and made recommendations for the purchase and sale of electric properties. He was also active in the reorganization of the New England Public Service Company which owned most of the utilities in Maine, New Hampshire, and Vermont. In addition, he handled the major part of the reorganization of

the Memphis Street Railway Company in 1932 when the line's bonds became defaulted.

In 1934 he left the bank and became an examiner in the registration division of the SEC. During the next three years he was engaged in analyzing all of the public utility registration statements filed under the Securities Exchange Act of 1934. In the following year he was transferred to the newly organized utilities division of the commission with the rank of assistant chief there. He left the SEC in 1936 and joined Joseph P. Kennedy, first chairman of the commission, assisting a number of companies with actual or potential reorganization plans. When Mr. Kennedy returned to government service in 1937, Mr. Hickey became a partner in the firm of Gilman and Hickey which prepared analyses of utility properties.

He assumed the presidency of United Corporation on April 22, 1943. To readers of the FORTNIGHTLY, Mr. Hickey may be remembered also as former editor of *Federal Utility Regulation Annotated—Current Service.*

Kinsey M. Robinson, referred to earlier as a witness who appeared before the Boren Committee recently, is another of the outstanding leaders in the industry and is one of the most outspoken presidents of the operating companies. A native of Minnesota, Mr. Robinson rose to the presidency of the Washington Water Power Company from a teamster in the early 1900's. Successively, he was a wireman for the Idaho-Oregon Light & Power Company, 1911-1912, and held various jobs, including foreman, groundman, lineman, local manager, division manager, general manager, and on up to his present position. His down-to-earth, homespun philosophy, and his ability to break down discussions to their simplest terms, has won for him the respect both of his colleagues in the industry and his opposites in the SEC.

On the West coast, James B. Black, president of the Pacific Gas and Electric Company, commands the respect of all who come in contact with him. He was elected to that office in 1935 at the age of forty-five and has continued to demonstrate his leadership ability. In his thirty-three years of public utility experience Mr. Black has been a vice president of the North American Company, which position he resigned when he took his present post, and brought a background of experience that began in 1912 when he became a service inspector for the Great Western Power Company of California. He attracted wide attention in April last year when he addressed the Commonwealth Club in San Francisco and took Harold L. Ickes to task for what he described a "regrettable lack

¶ "DURING *the next five years the electric light and power companies of this country expect to more than double their present record volume of business. Expansion of electric power lines, construction of plants, and other plans are being readied now.*"

of facts in connection with contracts entered into between the Department of the Interior and the Pacific Gas and Electric Company for the marketing of the output of the Shasta plant." Mr. Black's address further distinguished him as an authority on the service market in California.

Also on the Pacific coast is William C. Mullendore who was elected president of the Southern California Edison Company in the spring of 1945. For the twenty years preceding his election he was successively special counsel, then general attorney, vice president, and executive vice president. During that period, Mr. Mullendore has been exceptionally articulate in courageously presenting the case of the electric industry to the public on the West coast and in recent years has taken a top rank among American industrialists as a fluent champion of free enterprise and the American way of life, both as an author and speaker.

Considered by many in the utility industry as equaling the late Wendell L. Willkie as an interpreter of the industry and as a most profound individual in his understanding of socio-economic problems, Mr. Mullendore's view of one of the responsibilities of a business executive may be summed up by his affirmation in a speech made during the war:

> Ours is the hard and unpopular task of pointing out that we cannot recover from an excessive indulgence in fireworks by buying more fireworks. Someone has to call forcible attention to the fact that the price of the return to the free exchange system is the payment for the fireworks we have already consumed, and the avoidance so far as possible of further indulgence. The American people will have to be told the truth — that if they are to preserve their freedom there must be a sharp and painful reversal of the prevailing attitude of the past several years, an awakening and an about-face, which will require fortitude, self-denial, and an acceptance of individual responsibility far beyond that which is being exhibited even now in the midst of a war in which we have assumed responsibility for freedom throughout the world. Yes, the American people need to be told now, and in no halfhearted way, that even if and after they have won freedom for other nations, they are going to have to struggle to regain and restore their own.

Another of the largest utility systems in the nation is headed by Edward L. Shea, president of the North American Company since November, 1939. His, too, are the qualities which guide a company serving vast communities with an outstanding degree of efficiency. When he assumed the presidency of the North American Company Mr. Shea brought with him a background of executive ability and experience that made him one of the world's outstanding leaders in the oil field where he was president of the Tide Water Oil Company and, just before joining North American, executive vice president of the Tide Water Associated Oil Company.

ELMER LINDSETH, president of the North American Company's subsidiary, the Cleveland Electric Illuminating Company, is another outstanding executive who brought with him a thorough knowledge of the business, as witness his rise from a test helper in 1924 to the head of one of the most progressive operating companies in the country. A graduate of Miami University, Case School of Applied Science, and Yale University, Mr. Lindseth has done an outstanding job in Cleveland as head of the Committee for Economic Development there and former vice chairman of the Greater Cleveland Postwar Planning Council.

To name just a few of the many additional personalities who exemplify leadership similar to that displayed by the men mentioned above, they are as follows:

John Evers, vice president of the Commonwealth Edison Company in Chicago; Walter H. Sammis, president of the Ohio Edison Company, Hugh C. Thuerk, president of the New Jersey Power & Light Company; Phillips B. Shaw, president of the Arizona Edison Company; Earle S. Thompson, head of the American Water Works & Electric Company; and Rob Roy McLeod of the Niagara Hudson Power Corporation.

THE roster is long and the examples of leadership are numerous. Nowhere can one find what someone recently called "obsolescence of management" in the industry. If there is any, it has not yet been reflected in the operations of an industry whose record during the past five years has won unlimited praise from war manufacturing centers which depended so heavily on the electric power that "never was too little or too late."

That the industry needs just such leadership today is apparent in the plans now being made for an unprecedented era of expansion. During the next five years the electric light and power companies of this country expect to more than double their present record volume of business. Expansion of electric power lines, construction of plants, and other plans are being readied now. In addition, these men bring a fresh point of view for the solution of current problems, including relations with the SEC. Pointing to the further need for the engineering skill with which these men are equipped are the rapid strides being made almost daily in technology and engineering.

With a strong faith in the future of free enterprise and an awareness of the responsibilities entrusted in them as heads of a public service enterprise, these men continue to give every indication and assurance that the public utility business is more than just an industry; it is a public trust.

How about Vacuum Sales, Mister Lammers?

EXPERTS *attending a meeting of the Louisiana Engineering Society last winter looked into the future and envisioned travel by rocket ships as well as homes that need never be cleaned.*

E. S. Lammers, Atlanta, industrial engineer of Westinghouse Electric & Manufacturing Company, explained that brooms and dust pans will be things of the past because houses will never get dirty.

A new electronic device, he said, will filter all air that enters a building and will even remove cigarette smoke and kitchen vapors.

"This electronic device—called an electronic precipitator —is not a thing that is to be developed," Lammers said. "It is operating now in industry."

Radar: Industrial Giant

Miracle worker in war, it will have a much more extended use in peace, benefiting, among other things, all forms of travel and transportation.

By ROBERT M. HYATT

RADAR! The reader knows the word well. For the four blackout years of war it was the most hush-hush word in the language. It symbolized mystery and wild legend. Only skimpy references were made to its strange accomplishments. It was surely one of the mightiest factors in bringing Germany to her knees.

Radar is still a mysterious word in many respects, even though several magazines have printed articles revealing its secret inside workings, how it operates, what it is.

That being the case, we shall not discuss these well-known factors. Instead, we shall confine ourselves to pointing out some tremendously important angles of radar which have received scant attention. For instance, this weird ray may well become one of the giants of modern industry. There are many angles of radar. It is not simply a device for locating (no matter how invisible) any target on land, sea, or in the air. In that ability it is a miracle worker. It shows observers exactly what a target is, how fast it is moving—and how to aim their weapons to fire upon it. Those were its war uses.

In industry, radar has far more uses. All forms of travel and transportation will be greatly benefited because of it. Its numerous and flexible applications for making all sorts of (heretofore dangerous) vehicles and machinery safe and foolproof are staggering. It has big jobs cut out for it on the nation's vast railroad blue print, in reducing motorcar accidents to zero, in making flying positively safe. In fact, radar bids fair to become one of the keystones of modern living.

WAR—which, oddly enough, is the greatest sponsor of scientific achievement, causing men to think and act with no waste of time—is responsible for a number of things the world might not have seen for many years to come. Consider, for example, the strides in synthetics, the advance in plastics, in medicine, in photography

(it is now possible to take beautiful color pictures on ordinary black-and-white film), in speeding up education methods, and, lastly, electronics. And here, indeed, man has magnificently demonstrated his latent genius. Take communications — "handie - talkie" radios, television, frequency modulation, radar. And we must not forget atomic energy.

At this time, radar looms as the greatest boon to safe flying ever conceived. A technique developed by the medium-bomber men of the Fifth Air Force will be applied to all sorts of transportation. The CAA is experimenting at Indianapolis with a commercial adaptation of the "BABS" (Blind Approach Beacon System) device used by the AAF and Navy for landing planes in the thickest fogs. Airport control officers will be provided with a large master scope that will show, even in the worst weather, all planes in the vicinity of the port. Air liners and personal planes will carry their own navigating and detection equipment to make flying safer and easier.

ONE requisite for safe aerial navigation is an exact knowledge of the plane's altitude above the nearest terrain. The answer lies in the new "absolute altimeter," a simple radar device that projects its waves downward and measures the time required for its return from the nearest ground. (Old - fashioned altimeters merely showed the pilot how high he was above sea level; they gave no indication of mountains rearing up in his path.)

Collisions with airplanes — once commoner than you might think — is now almost impossible because of TW —tail-warning—a simple radar device placed in the tail assembly. It rings a bell to warn the pilot when a plane is approaching from the rear. Used on the nose of the plane also, the bell rings when you are coming within range of another ship ahead.

Everything that has been said about airplane safety and navigation applies also to surface vessels, except that ship navigation by radar is easier for two reasons:

First, because ships move more slowly; and, secondly, because altitude finding is out of the picture because ships are always at sea level. Ships will all mount heavier equipment — search radars—that will show coast lines, projecting rocks and reefs, harbor buoys, icebergs, and of course other ships. Officers will be warned of the proximity of any of these obstructions while still miles away from them. In fact, they will view continuously on a screen, or scope, everything before and on either side of them, with exact mileage recorded automatically.

STEAMSHIPS equipped with radar navigational and detecting devices will maintain faster schedules in bad weather, entirely eliminating any possibility of collision.

Railroads, which have chalked up a disturbing list of serious wrecks in the past few years (mostly because they were not allowed the steel and other materials necessary to keep up roadbeds and rolling stock), are looking to radar with great interest. They will use it for signaling, for the automatic stopping of trains when tracks are obstructed, and for locating trains on a master board in the dispatching and traffic-control offices.

Many Uses for Radar

"MANUFACTURERS *will employ radar in a number of ways. In making heavy machinery safe, in detecting flaws or breaks in steel and other metals, in automatically shutting down machines in emergencies. The wartime use of radar at sea suggested another possibility: catching fish with the ray by locating schools of the finny folk at any distance or depth. This may sound a little farfetched, but it has been tried successfully.*"

A radar-type radio communication system using ultra high frequency will be installed on the Rock Island Lines, according to a recent announcement of J. D. Farrington, president.

Farrington said it would be the first application of radar components to a railway system, and will use the fairly secret Klystron tube. This tube makes possible use of a wave band 20,000 times as wide as the home broadcast band.

The equipment will be installed on the 160 miles of track between Chicago and Rock Island, over which moves all the traffic between Chicago and other points on its 8,000-mile system.

Science is working on a radar device that keeps a continuous check on the condition of the rails miles ahead of the locomotive — and reports any breaks or sprung rails in plenty of time to halt the train.

EVENTUALLY, as radar systems are greatly simplified, some adaptation of the interrogator-beacon system might be used to prevent collisions of autos and trains. For instance, for use in storms and fog, every motorcar and train might soon be required to have an interrogator installed alongside its headlights, and transponders installed both front and rear. Thus there would always be warning against either a rear-end or a head-on collision.

The drowsy automobile driver of tomorrow will have radar on his side in a big way. Hugo Gernsbeck of the Radio Manufacturers' Association stated recently that the sleeping driver can be made harmless by the use of auto-radar.

Although the driver is motionless, the moving car or "anything that moves anywhere" may be radio-equipped for safety, Gernsbeck said.

"By coördinating the radio detecting

and ranging device with operating mechanism of an automobile, another car, barrier, or any other approaching danger can be located, the engine shut off, and the brakes applied automatically," the expert explained.

Bad street and highway crossings, and railroad crossings too, can easily be made absolutely safe by use of a simple radar device not yet invented, but surely on its way. Each car and truck has a warning indicator installed in the driver's compartment. Each dangerous crossing has a detecting device which sends out invisible radar waves. Whenever a vehicle enters the fringe of these rays, the warning indicator in the driver's cab flashes a light, rings a bell, or both. Thus, say, a block before your car enters a "blind" intersection, you are warned that another vehicle is approaching from right or left. With such a warning no motorist is prone to "take a chance."

MANUFACTURERS will employ radar in a number of ways. In making heavy machinery safe, in detecting flaws or breaks in steel and other metals, in automatically shutting down machines in emergencies.

The wartime use of radar at sea suggested another possibility: catching fish with the ray by locating schools of the finny folk at any distance or depth. This may sound a little farfetched, but it has been tried successfully. It works like this: A detecting device is mounted on the bow of the boat, which shoots rays forward or straight down. Of course, schools of fish are easily seen when they are near the surface, but frequently fishermen lose heavy catches by being unable to detect the presence of these groups when too deep. Radar waves will tell them exactly how far down the school is, and will pick up other schools far ahead and to either side of the craft. This should result in some record-breaking catches in the near future, thus making commercial fishing a lucrative business.

With whaling fast getting on its feet (it was dormant all during the war), radar should prove of inestimable value in locating the mighty sea mammals long before they "spout," thus revealing themselves.

CRIME detection is another important field wherein radar holds many tricks up her invisible sleeve. Many a police, sheriff, and other law-enforcement officer's car in various cities is now equipped with "handie-talkie" wireless telephones. They are proving their value, too. But banks are still guarded only by outmoded burglar alarm systems, which can be made useless by clever crooks. An entire bank building could, with no great outlay of capital, be rendered "impregnable" by the installation of radar devices which would guard every wall opening and even the floor and ceiling in the event of burglars digging or entering through the roof.

These are only a few of the countless uses of radar when reconversion is completely under way. The end of war has made many types of radar devices obsolete. Considerable adaptation will be required to fit radar to its peacetime tasks. Radar discoveries fathered by the war will be expanded and built upon. These things will not come about this year; it may take several years to work out details of many applications now cooking in experimental laboratories. But they will come.

RADAR: INDUSTRIAL GIANT

HERE are a few radar "firsts" which may be interesting:

First radar observation — September, 1922, when Dr. A. Hoyt Taylor and Leo C. Young, at Naval Aircraft Radio Laboratory, noted that radio signals were reflected by tall buildings and by passing ships.

First airplane application — June, 1930, when L. A. Hyland, working under Dr. Taylor, noted that an airplane, crossing a line between radio transmitter and receiver, gave an interference pattern indicating the presence of the aircraft.

First Army experiments—after January, 1932, when the Navy passed on to the War Department the results of its ten years of research. At this time, detection of aircraft 50 miles away was possible. By 1934, the distance to these planes could be accurately determined.

First use on a battleship — 1939, when an experimental set was installed on the *USS New York,* and successfully detected the presence of destroyers hidden in the fog 8 miles away.

First radar contract — October, 1939, when six sets were ordered by the Navy from RCA for installation on battleships.

First use on aircraft—Boston, 1939, for a blind landing.

First use in war—1940, when the British, who had conducted independent research and development, used radio locators to spot German aircraft long before they reached the English shores, enabling RAF planes to intercept them to win the Battle of Britain.

First American use in war—at Pearl Harbor, December 7, 1941, when Private Joseph Lockard, off duty, detected approach of planes which turned out to be Japs, though Lockard's warning was foolishly unheeded.

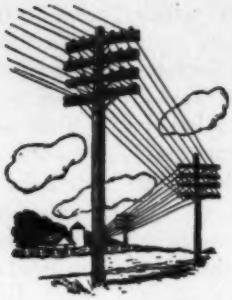
First warship sunk by radar location—May, 1941, when the Germans detected *HMS Hood,* thereby hitting it with their first salvo.

First use for aerial bombing (of invisible target) — October, 1943, in the U. S. Army Air Force raids on Germany and Austria.

SINCE then radar has grown up, convincing scientists that they had spawned not only a deadly instrument of war but one of mankind's greatest single factors for better living. Experimentation in radar is going on at white heat. Perhaps for every device publicly announced, there are ten upon which busy engineers are pondering and working.

There are something like ten million persons who were well acquainted with radar during the war. That means there are approximately ten million persons still capable of bending their knowledge and abilities toward constructive work in radar. It, then, should be one of the biggest factors in combating the possible unemployment bogey in this and other countries.

There is an industry to take on these trained men and women. There will be men streaming back from battle who have made up their minds to shape their careers around the possibilities of the device they first saw in a bomber or on a beachhead. Government research and industrial development, which teamed up so successfully during the war, have no intention of "divorcing." Working together, this combination will pay off handsomely.



The Carrier Phone Arrives —Via REA

A description of the interesting experiment recently announced by REA and the Bell system for an actual test operation by certain farm families in Arkansas of the carrier telephone, which uses the same wire which brings electric power service into the farmhouse.

By WILLIAM B. WHICHARD

CARRIER telephones—which send conversation "hitchhiking" over ordinary electric power lines—now are undergoing tests in Arkansas which may fix their value in future plans to extend telephone service in farm areas.

The tests, being conducted jointly by the Southwestern Bell Telephone Company and the Rural Electrification Administration, are utilizing the power lines of the REA-financed Craighead Electric Coöperative near Jonesboro. Four farms which use Craighead power have been equipped with carrier telephones connecting them with the central telephone office in Jonesboro. This experiment, though by no means the first field trial of carrier facilities, is the first to put them in operation on a day-by-day basis as part of a regular rural telephone circuit.

The carrier circuit transmits speech by means of a carrier wave of radio frequency. Electronic transmitting and receiving equipment is installed at the switchboard and at the subscriber's end of the power lines which carry the radio frequency current.

From the subscriber's viewpoint the service rendered by the carrier circuit is identical with that of conventional telephone equipment. Dial telephones are used, though Bell engineers say that nondial instruments will operate just as well on the circuit. The only additional equipment in each house is a small box containing electronic tubes which produce the high-frequency "carrier" current. On the poles, outside "couplers" permit this current to enter or leave the power lines, at the same time preventing the power current from entering the telephone equipment.

THE CARRIER PHONE ARRIVES—VIA REA

BELL system experiments with carrier equipment began several years before the war. REA, originally interested only in finding a means of communication between power maintenance crews and their home offices, joined in the research in 1939. A trial installation in St. Mary's county, Maryland, was set up for this purpose by Bell and REA engineers.

The war put a brake on further trials, though tests of carrier facilities were made in Minnesota and in Hutchinson, Kansas. A more thoroughgoing experiment, along the lines of the Jonesboro operations, has started in the past few days with Bell and the Alabama Power Company adapting carrier circuits on the company's rural lines near Selma, Alabama.

This installation and the one in Arkansas are too recent as yet to indicate the practicability of carrier equipment in its present state of development. Bell engineers admit that they expect "bugs" to crop up during these tests. Already they have overcome a number of difficult engineering problems as a result of previous experiments.

Among these problems was the prevention of mutual interference from low-frequency, high-voltage power currents and the high-frequency, low-voltage carrier currents flowing in the same wire. It was also necessary to eliminate reflections from branch lines off the power circuits used for the carrier current. Line noise, at first so loud as to render conversation almost impossible, also had to be done away with.

As such problems arose, new equipment had to be developed or old equipment modified to meet them.

THE immediate question concerning the carrier plan is whether or not subsequent "bugs" can be eliminated promptly and economically. On the answers supplied by the Arkansas and Alabama tests will rest the decision as to whether carrier equipment can be turned out in mass production and then be put to use on a commercial basis. If these requisites can be met, carrier facilities probably will become an important factor in plans to solve the rural telephone problem.

A number of other technical developments are being tested in connection with the telephone industry's plans to expand operations in farming regions. One frequently talked of by telephone engineers involves the use of short-wave radio beams to connect extremely inaccessible farm homes with the nearest land wire telephone circuits. With the prospective adaptation to civilian use of the "walkie-talkie," and the myriad demands for short-wave frequencies for other purposes, it is improbable that the use of the radio waves for commercial telephone could be very extensive. On the other hand, it would not need to be, since this project has been studied in an effort to extend service only to the comparatively few homes that cannot be reached with land-line wires.

The belief is widespread in the telephone industry, however, that the situation by and large calls for less spectacular steps. It has been pointed out time and again that a great majority of unserved farm homes are already within simple connecting distance of existing telephone lines. A large number of these homes at one time or another have had their telephone service disconnected, as testified by the taped

REA Administrator Wickard's Statement on the Arkansas Carrier Phone Test

"AFTER several years of engineering association with Bell Telephone Laboratories in experiments in telephone communication by means of electric power distribution lines, the REA is pleased to see the first installations of carrier telephone facilities made on the lines of an REA-financed coöperative.

"The Arkansas test will be made over ordinary REA-financed rural power lines under actual working conditions. We have hopes that the result will prove the practicability of telephone communication over rural power lines throughout the country in areas now without telephone service. We are confident that REA borrowers now operating 440,000 miles of lines will be keenly interested in the Arkansas tests.

"REA and its borrowers will be glad to continue coöperating with the telephone industry in its work on carrier telephones. We look forward to the larger opportunity for rural service which is promised in this development. The worth of REA-financed rural electric systems to the nation will be increased immeasurably if the same lines which have brought the blessings of electric light and power to rural homes can also be used efficiently to link those homes together in the nation's great telephone network."

disconnections on the poles near their doors. This would seem to imply that a major selling job must be done to return service to many farms.

As part of such a sales job the private companies are preparing to offer prospective farm subscribers a number of improvements in conventional telephone service. These improvements may, in some areas, include the use of plowed cable to save the expense of pole installation and maintenance, thus reducing service costs. Selective ringing has been proposed to replace the old code rings which proved so unpopular on farm systems. Reducing the number of parties, per line, is another item in the cards for the future. Small dial switching units will be installed among groups of farms to provide more convenient local service and to eliminate a large amount of the wire formerly used between homes and central offices.

These plans and other indications —such as the announcement that the Bell system has embarked on a $100,000,000 farm telephone development program—point to the obvious conclusion that the telephone industry is devoting great effort to expand rural service.

There is more than a suspicion that this effort is partially motivated by the specter of government intervention in the same style and perhaps on the same scale as present Federal operation through REA loans to coöperatives for rural power service.

STATE DATA ON FARM TELEPHONE SERVICE AND REA CUSTOMERS

(Recently released by Rural Electrification Administration)

	Number of REA Borrowers	*Miles of Rural Lines Operated by REA Borrowers*	*Consumers on REA-financed Lines*	*Farms without Telephone Serv. (1940 Census)*
Alabama	25	10,821	42,828	207,990
Arizona	4	632	2,255	14,541
Arkansas	20	10,080	32,616	191,330
California	6	1,502	4,595	75,189
Colorado	19	7,443	21,500	30,493
Connecticut	0	0	0	6,775
Delaware	1	1,012	3,225	5,986
Florida	17	4,102	13,401	51,391
Georgia	45	21,468	78,527	195,055
Idaho	9	3,130	7,626	27,096
Illinois	28	21,610	60,592	93,501
Indiana	46	23,242	79,330	91,685
Iowa	54	29,695	71,266	57,667
Kansas	28	9,895	20,019	61,408
Kentucky	26	14,067	54,285	201,777
Louisiana	17	7,652	24,877	138,019
Maine	4	448	1,427	18,796
Maryland	2	1,680	5,248	25,643
Massachusetts	0	0	0	11,548
Michigan	13	9,845	34,677	119,990
Minnesota	51	31,816	72,108	98,187
Mississippi	24	15,633	55,705	260,911
Missouri	40	21,687	66,813	142,349
Montana	18	3,339	8,050	32,596
Nebraska	26	12,382	25,722	63,124
Nevada	2	121	463	2,117
New Hampshire	1	1,418	2,969	6,522
New Jersey	2	415	1,617	14,152
New Mexico	10	1,401	3,933	29,464
New York	7	2,694	9,212	84,345
North Carolina	39	12,723	47,438	239,769
North Dakota	11	3,367	6,911	48,380
Ohio	28	19,001	65,557	126,112
Oklahoma	24	14,775	34,933	134,127
Oregon	14	2,951	10,279	36,731
Pennsylvania	13	10,162	34,575	102,941
Rhode Island	0	0	0	1,235
South Carolina	28	11,009	35,582	124,050
South Dakota	16	2,374	4,892	42,463
Tennessee	30	12,562	90,881	203,101
Texas	93	42,556	106,839	337,816
Utah	5	726	2,485	17,915
Vermont	3	1,085	2,981	11,521
Virginia	20	9,298	28,928	138,831
Washington	21	6,431	14,137	52,053
West Virginia	2	548	1,745	74,728
Wisconsin	32	16,195	43,759	105,335
Wyoming	14	2,410	6,112	9,978

THERE are bills presently before Congress to establish a Rural Telephone Administration or to extend the authority of REA to permit it to make loans for the establishment of telephone facilities such as those it makes for electric power ventures. Among these is the Hill Bill.

These bills, it is true, are getting little attention from their respective con-

gressional committees at the moment and may even be permanently pigeonholed.

However, the idea of government financing for rural telephone development has not been forgotten by its sponsors in several Federal agencies. On behalf of REA, the Agriculture Department has given the proposed legislation its official blessing. The Federal Communications Commission apparently assisted with the original planning for the proposed legislation.

In a letter approving one of the rural telephone bills in the hands of a congressional committee, Agriculture Secretary Clinton Anderson said, in part: "The basic reasons for our interest in the proposal are the facts that only about 25 per cent of all farms in the United States had telephone service as shown by the 1940 census, and the percentage of farms with telephone service has greatly decreased during the past twenty-five years . . . It is our belief that the assistance of government loans . . . would have the same successful history in the telephone field as has characterized the program of rural electrification."

More than a year ago the Federal Communications Commission prepared an interesting document which was a result of its studies of land-line wire communications. One section of this report was devoted almost exclusively to remarks and figures which tended to show that rural telephone service is in a pretty sorry condition and that the industry has done little to improve it. In happy contrast, the report included charts and editorial matter purporting to show a great expansion of rural electrification under the aegis of REA.

UTTERANCES of FCC officials in the past year have been crystal clear in drawing a conclusion from such comparisons. In a speech at San Antonio last January, FCC Member Paul A. Walker praised REA accomplishments in the rural electric field and plainly intimated that if private industry did not do better with rural telephone service, similar steps would be taken to foster telephone coöperatives.

REA suddenly has become downright coy on the subject. The agency's coöperation in the Jonesboro carrier experiment was "purely in the interest of science," according to the line adopted by officials interviewed in connection with the test. This attitude is borne out in the official REA release on the Arkansas operation, which uttered the hope that the nation's 2,750,000 farm families now served by rural power lines would somehow benefit by the future development of carrier telephone facilities. This announcement clearly indicated that carrier circuits are still in the experimental stage.

The statement on page 30 by Administrator Claude R. Wickard promised only continuing coöperation with the telephone industry in its work on carrier telephones. REA borrowers now operating 440,000 miles of line, Mr. Wickard added, are keenly interested in the possibility that the same lines which deliver electricity to rural homes may also provide telephone service in areas "not served by regular telephone lines."

The table on page 31 showing the extent of REA-financed power lines as compared with the number of farms without telephone service, also accompanied the Jonesboro announcement.

Government Utility Happenings

REA Administrator Claude R. Wickard has met charges against government-financed construction of power-generating and transmission facilities as follows:

1. Applications for these loans are inspired by agency coercion. Answer: a flat denial.

2. Private utilities are able and willing to supply rural power needs at lower costs. Answer: Yes, but it will cost the farmers more in the long run, especially if REA activities are completely eliminated.

3. Existing REA generating and transmission coöperatives have been operating at a great loss. Answer: Yes, but that has been due largely to war restrictions which have made it impossible to complete these projects. They will do better in the future.

Continued construction of power-generating and transmission facilities, financed by Rural Electrification Administration loans, is necessary to insure farmers of adequate electric service at reasonable rates, according to Administrator Wickard. This contention was made by the REA chief recently before a meeting of Red River Valley Coöperative members at Grand Forks, North Dakota.

Denying statements which he declared had been made during recent congressional hearings on REA requests for additional funds (probably the Poage Bill, which has met considerable opposition in the House Interstate and Foreign Commerce Committee), he said that a discussion of REA loans for construction had become important. These statements, he added, included charges that (1) applications for such loans had been inspired by REA coercion; (2) private utilities are able and willing to supply rural power needs at lower cost than they can be met by REA-financed construction; (3) REA-sponsored generating and transmission projects already in operation have been operating at a loss. He said:

> To my knowledge, no one on the REA payroll is attempting to coerce anyone to borrow money for the purpose of constructing generating facilities. To the contrary, the coercion, if the term has to be used, is coming from the other direction. That is, my staff and I are being constantly beseiged by people who want us to loan them money for these purposes.

In considering these requests, he went on, REA compares estimates of the costs of power to be supplied by the proposed construction with rates offered by private utilities operating in the same area.

Involved in these comparisons, however, are many intangibles, "some of them even more important than dollar-and-cent costs." Whereas certain private companies are furnishing power to coöperatives at less than cost, "it is well to realize that someone is paying for any power which is furnished below cost," Mr. Wickard stated.

This burden is not borne by officials and stockholders of the companies, he contended, but by other consumers, who sooner or later seem certain to complain and upset the arrangement. Thus, over an extended period of time, "farmers cannot obtain electricity below cost from anyone," and there is a question as to how much they will have to pay when assessed for their full pro rata share of the power cost in any given area.

Mr. Wickard said REA figures show that there has been a large and very sig-

nificant reduction in private utility rates wherever REA-generating and transmission projects have been authorized. Conceding that there has been a general decrease in power rates throughout the country in recent years, he held that it was more than a coincidence that "the largest decreases have usually been in regions where coöperative generating plants were contemplated and were timed just after the coöperative plans were announced."

Refusing to predict a return to previous high rates if government-financed power projects were eliminated, he none the less warned that the REA coöperatives were the farmers' guaranty that they, rather than stockholders and officials of private companies, would get the benefit of further rate reductions.

He admitted that "there may be some merit in some instances" to claims that REA-generating and transmission coöperatives cannot furnish power as cheaply as can private utilities whose service to towns and industries produces a more favorable load factor and whose generating units are larger and more efficient than smaller co-op units.

Of nine REA central-generating and transmission coöperatives now in operation, five have a combined surplus of $199,000, while four show a deficit totaling $322,000, according to REA records.

Blaming the deficit upon wartime interruptions in development, Mr. Wickard said that it would decrease rapidly with the completion of the projects, as shown by the net income of $107,000 earned this year by seven of the coöperatives compared to total losses of $3,700 by the other two.

The REA, he concluded, "must never be deprived of the authority to finance coöperative generating and transmission lines for the benefit of rural people. If rural people lose this opportunity they will lose their most potent defense weapon against inadequate service and exorbitant rates — a defense weapon against those who in the past have always charged for electricity all that traffic will bear."

SUBSTANTIAL progress is being made by the Bureau of Reclamation and other bureaus of the Department of the Interior on initial phases of the billion and a half dollar development program for the Missouri river basin, Secretary of the Interior Harold L. Ickes reported on December 6th.

Work of field crews in the basin is centered on completion of engineering and economic surveys on 29 initial projects authorized for construction by the Bureau of Reclamation under a comprehensive development program to harness the Missouri river for irrigation, power generation, and flood control.

It is planned to have surveys completed on 11 of these projects so that construction can be started by next year, Secretary Ickes said. The House of Representatives recently approved a supplemental appropriation of $10,269,100, now pending in the Senate, with which to advance the predevelopment program and initiate construction on 4 projects.

These projects and funds approved by the House for starting construction are: Angostura project on the Cheyenne river in southwestern South Dakota, $2,309,600; Roysen dam on the Big Horn river in Wyoming, $1,570,000; Kortes dam on the North Platte river in Wyoming, $1,267,400; and $1,000,000 for construction of a 150-mile transmission line from Williston to Garrison, North Dakota.

The transmission line will serve initially to bring power from Fort Peck dam for use of the Corps of Engineers during construction of the Garrison dam on the main stream of the Missouri. It will later become a part of the transmission system for the Garrison dam power plant.

* * * *

ARKANSAS electric coöperatives are preparing to quit buying power from private utilities and join a $220,000,000 REA-financed group that would distribute government-produced energy over a network of its own lines. The plan was learned after a meeting of Arkansas State Electric Coöperative Corporation officials in Little Rock last month.

T. E. Bostick of Augusta, president of the corporation, issued a one-sentence statement saying: "A resolution was adopted favoring the construction of a transmission system to serve the co-ops and municipal plants in the state."

Coöperatives in Arkansas, Oklahoma, and Missouri would be involved in the project. Power would be obtained from government-built multipurpose dams at Norfork, Grand river, and elsewhere in the area and distributed over a great system of lines that association officials hope will serve most rural areas of the three states.

The present 18 coöperatives and 2 proposed co-ops would be associated in the Arkansas project. Among them would be the Ark-La Electric Coöperative, Inc., which delivered power during the war from the Grand river in Oklahoma to the Lake Catherine aluminum plant.

The courts have held that Ark-La is a utility and not a coöperative, and is subject to regulation by the state public service commission. But Mr. Bostick said the co-op would not be subject to this regulation after its inclusion in the new project.

* * * *

RECENT announcement by President Truman of his appointment of Michael W. Straus as United States Commissioner of Reclamation and of the retirement of Harry W. Bashore from that office carries forward plans for an extensive postwar reclamation and natural resource development.

Mr. Straus resigned his office as Assistant Secretary of the Interior to undertake the new task when Commissioner Bashore insisted upon exercising his retirement rights at the end of thirty-nine years of service with the Bureau of Reclamation. Secretary of the Interior Harold L. Ickes, who transmitted Mr. Bashore's resignation to the President, said:

> I received Commissioner Bashore's resignation with great regret and accepted it only on his insistence that he be relieved of the responsibilities that he has discharged with great distinction. I am pleased with the appointment of Mike Straus, who has worked intimately with the Bureau of Reclamation for more than twelve years, and who is entirely familiar with the enlarged program that must drive forward.

The United States Bureau of Reclamation in forty-three years has invested approximately a billion dollars in building an irrigation empire in the West, where 4,000,000 acres of desert and semiarid lands have been transformed into productive farms on which 11,000,000 tons of food and forage crops were produced last year. The bureau is also the largest single producer of electric power in the world as a result of its multiple-purpose developments, including such structures as Boulder dam, Grand Coulee dam, Shasta dam, and many others in the 17 western states. The Congress has authorized an enlarged program for the coming years to catch up with the accumulation of work during the war years when construction was held to a minimum.

Commissioner Straus was born in Chicago in 1897, attended the University of Wisconsin, and served in the Navy in World War I. After some time as a newspaper reporter, editor, and Washington correspondent, Commissioner Straus entered government service in 1933 as an assistant to the Public Works Administrator. He was loaned to the War Production Board for a year, but returned to Interior Department in 1943 and was named First Assistant Secretary of Interior by the late President Roosevelt.

* * * *

DELEGATES to a statewide conference held early last month in Sacramento discussed every conceivable aspect of California's water problems, including the effect on water planning of the atomic bomb.

Apparently there was unanimous agreement that an over-all water conservation plan was needed in the state among the speakers from governmental agencies, industrial and farm groups, and labor leaders at the 2-day meeting called by Governor Earl Warren. But there was wide disagreement on details, such as

methods of distributing water and power, what type of agency should control projects, and what types of projects should get attention first.

Leland S. Olds, acting chairman of the Federal Power Commission, in a statement presented to the commission, declared that California may eventually have to call on other areas to fulfill its power needs.

"Your future development may ultimately be restricted by lack of energy resources," he asserted. "That is, unless atomic energy is harnessed as a source of commercial power."

He added that the FPC believes that coöperation on river basin programs between all agencies, local, state, and Federal, was of "fundamental importance." To achieve this coöperation, he asserted, some regional organization must be given "complete responsibility for the long-range accomplishment of the agreed-upon objectives."

A Federal authority to oversee development in California also was advocated by George Sehlmeyer, master of the state grange. State construction and financing of the Central Valley project would require issuance of bonds, he declared, which "would nearly double the price of water."

The government also should construct lines to transmit power it develops, he contended, adding that it is "unthinkable . . . that it should spend millions in the development of a power project and then turn the energy over to a private utility for resale to the people."

On the other hand, James Mussatti, general manager of the California State Chamber of Commerce, advocated state control and management of the Central Valley project.

"We believe," he said, "that this is the only way in which we can escape from the orbit of social planning and the loss of states' rights."

The debate over whether power generated at water projects in California should be distributed publicly or privately developed on December 7th as the governor's water conference moved toward a conclusion.

Robert H. Gerdes, counsel for the Pacific Gas and Electric Company, argued that the most efficient use of electric power from Central Valley projects could be made through his company.

* * * *

CONGRESSIONAL action to eliminate Federal control over natural gas carried in the Big Inch and Little Inch pipe lines—when and if they are sold to private industry—is now being urged. Special enabling legislation or amendment of the Natural Gas Act to establish coöperative state commission regulation of gas moving through the pipe lines across state borders has been advanced as a means of eliminating FPC jurisdiction over operation of the lines. The proposal was presented by a Texas group interested in purchasing the lines during recent hearings before the O'Mahoney committee. While it is unlikely to obtain congressional approval, the plan indicates the mounting opposition to FPC regulation of interstate gas carriers. The Senate subcommittee is apparently sympathetic to the desire of the gas interests to take over the lines. A rival public ownership group is in the picture.

FPC inclination to permit intervention of the coal industry in natural gas cases is probably the reason behind this move to substitute joint state control of natural gas for FPC control. One utility representative described the prospect of operating the pipe lines under FPC jurisdiction as the "greatest impediment" to their sale by the government. Before granting a certificate of necessity and convenience, he added, FPC would permit intervention of the coal industry, the railroads, and their workers, all of whom vigorously protested sale of the lines as gas carriers before the committee.

Gas people resent intervention in such cases by the powerful coal interests, which they term as interference with gas regulation by an unregulated competitor. There is also some fear on the part of the gas men that demands for an investigation of Federal expenditures for constructing the pipe lines might be sought by the coal industry.

Financial News and Comment

By OWEN ELY

Move to Revise Standard Gas Plan Gains Momentum

RECENT moves in connection with the much-amended Standard Gas & Electric recapitalization plan have been of special interest to students of holding company integration, as well as executives and security holders. Developments in several other plans now before the SEC or the courts may well follow the lead of the Standard Gas Case.

It will be recalled that the final amended plan was approved over a year ago by the SEC, was disapproved by Judge Leahy of the district court on the ground that bondholders should receive all cash instead of cash and securities, and that the court of appeals reversed the lower court. The plan then went back to Judge Leahy for confirmation. During this long delay prices of utility stocks were in a continued uptrend, with the result that bondholders would now receive a "package" value of about 121 per cent, instead of the face value of 100 per cent favored by Judge Leahy, or the redemption prices for the six bond issues of 100 to 104.

Some weeks ago a group of preferred stockholders headed by C. A. Johnson organized to oppose the plan, and Alfred Berman of Guggenheimer & Untermyer (counsel for the committee) submitted an appeal to Judge Leahy to disapprove the plan. Later the management of Standard Gas took action. Accompanying the proxy material mailed to Standard Gas stockholders was a letter from President Crowley stating that the management had noted the advance in the security market and "is availing itself of independent expert opinion on market values and trends as they affect the company's portfolio securities. . . . We must carefully weigh the present as well as possible future market conditions against the time required for further proceedings under the present plan or any modification of it." On December 11th the company formally requested Judge Leahy at Wilmington to disapprove the plan. The court gave counsel a few days' time to file proposed forms of a decree, accompanied by briefs.

THE SEC had previously asked the court to confirm the plan but it now gave limited support to the company's application for a change. David Kadane, SEC counsel, felt that Standard Gas still had the legal right to redeem its outstanding notes and debentures at their call prices but that they should not be given unlimited time to exercise this right. He asked the court to allow the company only ten or fifteen days in which to give security holders assurance regarding the new program. The company had already advised the SEC that it could redeem the bonds by selling its holdings of Pacific Gas and Electric and Oklahoma Gas & Electric in the near future and obtaining a bank loan of some $23,000,000. The commission was apparently willing to go along with this proposal if it could be effected promptly —presumably to avoid encountering another change in market conditions.

The commission, however, indicated through Mr. Kadane that it did not wish to have the court consider immediately the further changes in the plan which might be necessary if the company was permitted to redeem the bonds. In other words, it did not want

the sale of assets and the bond redemption to be delayed by litigation over distribution of the increased portfolio value among the four stockholder groups. This was an excellent move on the part of the commission, since the question of allocation is a "tough" one. Holders of the $4 preferred stock have obviously been hopeful of obtaining all the increased portfolio value for themselves. Earlier, when this second preferred issue appeared to be limited to only about one thirty-second of the amount of new common allocated to the $7 prior preference stock, the stock sold as low as 2¾. The common stock was delisted from the Stock Exchange and relegated to an uncertain over-counter trading status. But new developments pushed the $4 preferred to a recent high of 33¾. The common recovered from one-half to 3¾.

It is quite possible that the prior preference stockholders will claim that, on a priority basis, they are still entitled to a large proportion of the portfolio, even though this has increased substantially in value. However, on the theory that their claim to dividend arrears should probably be discounted some 25-35 per cent, the writer has estimated that the equity for the $4 preferred stockholders might be increased to around $25-$40 a share.* Some other Street estimates achieve higher levels.

These estimates, however, did not take into account the probable claims to recognition by the common stockholders. The latter group made a belated appearance in court through Murray Taylor, counsel for Standard Power & Light Corporation, which still owns a controlling interest in Standard Gas & Electric (including some senior securities as well as the large block of common stock). Standard Power & Light had previously joined in filing a plan, under which it would have turned over all of its assets to Standard Gas, receiving in return 11 per cent of the new common. Mr. Taylor indicated that his company had a rather uncertain status, since the commissio had "reserved jurisdiction" over thi phase of the plan. He advised Judg Leahy that he had now received a definit cash offer for the block of 1,160,000 com mon shares of Standard Gas owned b his company (about 54 per cent of th outstanding amount). No indication wa given as to the interests who had mad the bid. Later the bid was rejected.

There is another interesting legal de velopment, the significance of which i not very clear to a layman. It develope in the hearing before Judge Leahy tha Justice Burton of the U. S. Suprem Court on December 7th granted the peti tion of counsel for Union College o Schenectady, extending the Decembe 14th expiration date within which in terested parties could ask for a writ o certiorari from the decision of the U. S Circuit Court of Appeals.

* *Commercial and Financial Chronicle*, November 29th, page 2574.

High Construction Costs As a Rate Factor

While there is no available inde for the cost of utility plant con struction, the accompanying chart of th American Appraisal Company gives good picture of the trend of construc tion costs over a long period. This inde has now reached 270 compared with 10 in 1913 and about 200 in 1938-40. Con struction costs are now about 35 per cen in excess of the immediate prewar leve and some 70 per cent above the level o 1932-36.

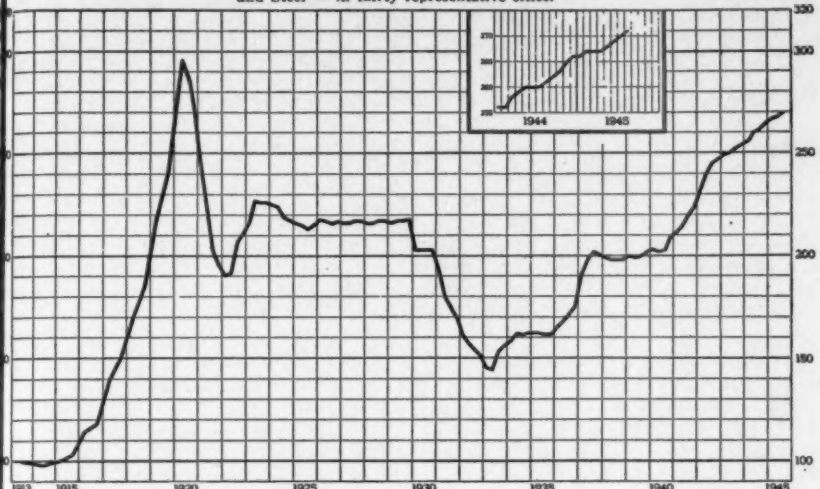
While the cost of new construction ha been rapidly rising, the regulatory com missions have been busy writing dow plant values to "original cost when firs devoted to public service." The facto of "cost of reproduction less depreci tion" is no longer given much weight i regulatory circles, although the mor liberal commissions still take it into ac count in fixing "fair value."

The commissions have been incline to stress the lower cost of obtaining ne capital in determining "fair rate of re turn." In a broad way this appears t

The American Appraisal Company Construction Cost Indexes and Graph

Cost Indexes of Average Construction and Representative Items of Material and Labor

The National Average Construction Index is based on four types of buildings — Frame, Brick, Concrete, and Steel — in thirty representative cities.



rom American Appraisal Company Bulletin

fluctuate somewhat with bond interest rates, running about two points above the cost of bond money, to provide a higher return for junior capital. However, in fairness to the utilities the commissions should recognize that the present high cost of new construction is an offsetting factor to the lower cost of "hiring" capital for additions and betterments.

Common Stock Offerings Prove Successful

DURING the past two or three months bankers have been able to offer common stocks of utility operating companies at prices practically equivalent to the "going rate" for many seasoned issues. This appears a bit unusual, since the general assumption has been that a slight discount is necessary to enlist buyers' interest. However, stocks already on the market could not be bought in volume equal to that of the new issues without bidding up the price level; hence in the present sellers' market no discount appears to be necessary.

The ratios for the last three offerings are listed in the table below.

While there were special considerations in each case with respect to esti-

Date of Offering	*Company*	*No. of Shs. (000)*	*Price to Public*	*Latest Sh. Earnings**	*Price-Earn. Ratio*	*Indic. Div. Rate*	*Approx. Yield*
Oct. 24	Florida Power	539	17	$1.02	16.6	$.80	4.70%
Nov. 7	Central Arizona L&P .	840	13¼	.84	15.6	.60	4.58
Dec. 12	Sioux City G&E	153	28¾	1.49	19.4	1.30	4.50
	Average				17.2		4.59%

* As stated in the prospectus.

mates of future earnings and other factors which entered into the pricing of these issues, the ratio averages work out about the same as for operating company stocks already traded in.

How Near Is Atomic Power?

THE NEW YORK TIMES recently carried a headline, "Heating by Atoms Seen As Imminent — International Authority Urged by Scientists, Who Predict Harnessing for Power." Dr. J. Robert Oppenheimer, one of the leading authorities on atomic energy, was quoted as stating that it was feasible for a city the size of Seattle to be completely heated from an atomic energy source within five years.

At a recent conference at the Waldorf attended by 600 persons, Boris Pregel, president of Canadian Radium Uranium Corporation, went still further in stating that "the applications of atomic energy to civilian life are possible, imminent, and even unavoidable."

Mr. Pregel held that large plants, not depending on any natural resource, "will be able to distribute this cheap power, costing practically nothing, to large areas. . . . Cheap power in unlimited quantity means abundance of cheap products." Stuart Chase then warned that technological unemployment would become catastrophic unless plans were made immediately to cope with the new problems, and Secretary Carey of the CIO warned against atomic energy becoming "the tool of monopolies."

In our opinion, such discussion is premature and alarmist in character. The atomic bomb research was carried out in a relatively short time because of the terrific pressure of wartime needs, and the ability of the government to commandeer money, men, and materials in unlimited amounts. Peacetime research into commercial applications will not reflect this urgency. Moreover, it seems probable that the supply of uranium is too small, and its refining too expensive to make nation-wide power or heat by fission commercially practicable as yet.

THE *Electrical World*, in a rece editorial, considered the outlo from the viewpoint of the utility co pany. It pointed out that the fu component of a steam power pla represents only about 30 per cent of t cost of the entire station. Modern stea plants use about three-quarters of pound of coal to produce one kilowa hour, making the cost from 1 to 3 mil (depending on location in relation to co mines). With the average residenti rate around 35 mills and the average i dustrial rate about 9 mills, it is obviou that any saving in fuel costs of 1 or mills is not going to have a great deal o effect on power costs, especially if elab orate and expensive equipment is neces sary to replace present facilities.

Looking at the matter from anothe angle, fuel costs in 1943 were abou $363,000,000. Kilowatts generated b fuel were about two-thirds of the tot and, applying the same ratio to revenue the value of the product was about $1 880,000,000. Fuel cost in that year wa therefore, less than one-fifth of total e timated revenues from steam and inte nal combustion plants. Considering th capital cost of a new plant, there woul have to be a very sharp reduction in th cost of generation by atomic fission a compared with that of fuel-generate kilowatt hours to permit any reductio in rates, or increase in earnings.

The *Electrical World* points out tha we already have two important generat ing systems—steam and hydro—exist ing together; there are also high-pres sure and low-pressure systems, and othe variations. To assume that there will b an immediate change-over from all ex isting equipment is unwarranted. In thi connection it might be added that th mercury boiler has been known for som years to be more efficient than the steam boiler, yet the high cost of mercur makes its general use doubtful. Fo the present the same situation may appl to Uranium 235, plutonium, etc.

The danger of obsolescence in ou present electric plants does not seem great enough to warrant substantial ac celeration in the rate of depreciation, es

cially where reserves are substantial. fter all, there is nothing fundamenlly new in atomic power. We can alady get power without burning fuel by rnessing waterfalls, tides, the winds, the sun's heat. But the plant cost for is harnessing, or the high distribution st due to inconvenience of location in ference to markets, is a heavy offset to e fuel saving.

Holding Company Stocks

DURING the three months' interim since our list of holding company ocks last appeared, market prices have ntinued to advance for both preferred and common stocks. Among the principal gains are those of American Gas & Electric, American Power & Light preferred, American Water Works, Cities Service, Columbia Gas, Consolidated Electric & Gas preferred, Electric Bond and Share, Illinois Power, Middle West, Standard Gas preferred, and United Light & Railways. The average price-earnings ratio has advanced from 14.7 to 17, and the average dividend rate has dropped from 4.20 per cent to 3.76 per cent. The average price-earnings ratio now approximates that for the operating companies but the dividend yield is somewhat lower (liquidating dividends such as those of Middle West and Ogden being excluded from consideration).

ELECTRIC-GAS HOLDING COMPANY STOCKS

	Where Traded	12/14/45 Price About	Share Earn. 12 Mos.	Amt.	Price-Earn. Ratio	Indic. Div. Rate	Yield About
merican Gas & Electric	C	43	Sept.	$2.42	17.8	$1.90	4.42%
merican Lt. & Traction	C	24	Sept.	1.56	15.4	1.20	5.01
mer. Pwr. & Lt. $6 pfd.	S	98	Aug.	7.77	12.6	...	...
merican Water Works	S	22	Sept.	.70	31.2	...	...
entral & South West Util.	C	11	June	.52	21.3	...	...
ities Service Co.	C	28	Dec.	3.88	7.2	...	...
olumbia Gas & Electric	S	11	Sept.	.50	22.0	.20(f)	1.82
om. & Southern pfd.	S	120	Sept.	8.01	15.0	5.25(f)	4.40
onsol. Elec. & Gas pfd.	O	83	June	11.52	7.2	...	...
lectric Bond & Share	C	20	Sept.	D.59(a)	...	...	...
lectric Power & Light	S	18	Aug.	2.04	8.9	...	...
ngineers Public Service	S	35	Sept.	3.27	10.7	...	...
ederal Lt. & Traction	S	24	June	1.52	15.8	1.25(f)	5.23
llinois Power Co.	C	34	Sept.	1.82	18.7	...	...
iddle West Corp.	C	22	June	1.12	19.7	.50(c)	2.27
ational Power & Light	S	10(g)	Aug.	.75	13.4	...	...
iagara Hudson Power	C	9	Sept.	.38	23.7	...	...
orth American Co.	S	29	Sept.	1.73	16.8	(d)	...
gden Corp.	C	6	Dec.	.23(a)	26.2	3.00(e)	...
hiladelphia Co.	C	15	June	1.00	15.0	.57½(f)	3.84
ublic Service of N.J.	S	24	Sept.	.83	29.0	.80	3.33
tandard Gas & Elec. $7 pfd.	S	128	June	11.05	11.6	...	...
nited Corp. pfd.	S	49	Dec.	3.67(b)	13.4	1.75(f)	3.58
nited Gas Improvement	S	23	June	.65	35.5	.85(f)	...
nited Lt. & Railways	C	27	Sept.	1.75	15.4	1.00	3.72
Averages					17.0		3.76%

(a) Parent company basis.
(b) Earned $1.49 nine months ended September 30, 1945.
(c) Capital distribution of $2 in 1944; another such liquidating dividend is anticipated in the near future.
(d) Four per cent in Pacific Gas and Electric common stock, worth at recent market price $1.76.
(e) Liquidating dividend.
(f) Payments irregular.
(g) Ex-rights to subscribe to Pennsylvania Power & Light common (rights sell at 4¢).

What the State Commissioners Are Thinking About

Excerpts and digests from the opinions expressed in reports and addresses at the annual convention of the National Association of Railroad and Utilities Commissioners in Miami Beach, Florida, from December 4th to December 7th, 1945.

On Natural Gas Rate Reductions

"REDUCTIONS in rates to distributing companies, which have resulted from rate reduction orders by the Federal Power Commission, have been large, especially reductions in natural gas rates. In most instances, I believe, these reductions in operating cost to distributing companies have been promptly reflected in reductions in consumers' rates. Nevertheless, such prompt reduction to consumers may not always be made unless state rate-making officials are on the alert to insure that the distributing companies do not retain for themselves the benefit of the reductions required by the Federal Power Commission. It would be helpful if the Federal Power Commission advised the various state commissions of the public utilities in each state that will be affected by one of its rate orders, and the amount, at the earliest possible date in order that the state commissions may act promptly."

—JOHN D. BIGGS,
President, National Association of Railroad and Utilities Commissioners.

On "Rate Base" and "Fair Value"

"THE term 'rate base' is rather new. It first began to be used by those who did not like the phrase 'fair value,' but it means the same thing as 'fair value.'

"Whatever the measure of 'fair value,' according to the conception of different people, the thing itself is the amount to be multiplied by the fair rate of return to obtain the amount which the owner of the property being regulated is entitled to demand as a return upon that property. It is in that sense that I say 'fair value' and 'rate base' mean the same thing."

—JOHN E. BENTON,
Advisory counsel, National Association of Railroad and Utilities Commissioners.

On Developments in Regulatory Law

"VIEWING the scope of this report . . . from the aspect of observing the trend of the law in the field of public utility administration, we see that our commissions con-

nue to enjoy the exercise of the widest discretion in the execution of their functions and powers that is possible under an elastic interpretation of Federal constitutional law. here is some indication also that the courts re endeavoring to give to the state, as a unit of government within the Union, the utmost freedom of action in the regulation of he inter-related fields of interstate and intrastate commerce that is compatible with the supremacy of the Union, itself, in preserving he flow of interstate commerce over state orders.

In a large sense of the word these powers complement one another, since the exercise of a wide administrative discretion by our commissions is derived from the legislative branch of the state and the control over intrastate commerce is the exercise of a function by the state, itself.

". . . in conclusion, it can be said that the developments in public utility law since the last convention appear to hold some promise for the continuance of state control and the exercise of a wide administrative discretion in the regulation of public utilities."

—REPORT *of Special Committee on Developments in Regulatory Law, Frank H. Sommer of New Jersey, chairman.*

On Question of Low Cost of Money

"IT is a matter of common knowledge that interest rates and the cost of money, whatever may be the explanation therefor, are substantially lower now than they have been in the immediate past. Whether this present level will continue in the future is anybody's guess. David Ricardo, the famous economist, in the early nineteenth century envisioned the growth of a mature economy in which interest rates would become progressively lower. Have we reached that objective and will we continue on that level? Nobody knows."

—CLYDE OLIN FISHER,
Member, Connecticut Public Utilities Commission.

On Coöperation with FPC—Study of Natural Gas Reserves

"THE committee had one meeting with the members of the Federal Power Commission and several members of its staff in February 21, 1945, in Washington, the resulting determinations of which meeting were substantially as follows:

"(a) The investigation is solely that of the Federal Power Commission.

"(b) The province of the special committee is to coöperate with the Federal Power Commission in such investigation.

"(c) That a separate record is not to be made for the special committee, but the special committee and member commissions of the National Association of Railroad and Utilities Commissioners may have access to the record of the Federal Power Commission for such information as they respectively may deem necessary from time to time.

"(d) That member commissions of the national association might participate in such investigation by complying with the rules and regulations adopted by the Federal Power Commission for the conduct of such hearings.

"(e) That Federal Power Commission would welcome the participation of the members of the special committee and member commissions of the national association at the hearings conducted by the Federal Power Commission.

"(f) That the Federal Power Commission desires the coöperation of the special committee and all member commissions of the national association in the investigation, in order that all facts pertinent to the matter investigated may be developed and placed upon the record."

—REPORT *of Committee to Coöperate with FPC —Study of Natural Gas Reserves, John Siggins, Jr., of Pennsylvania, chairman.*

On Federal and State Coöperation

"AS understood by the Federal Power Commission, the fundamental purpose of coöperation is to facilitate the effective regulation of utilities in the public interest, at the same time minimizing conflicts of orders and requirements and avoiding unnecessary expense. The regulation of electric and natural gas companies, under our dual system of government, is performed in part by the Federal Power Commission and in part by commissions representing the various states. The Federal and state commissions were created in the pub-

lic interest for a common purpose. This was recognized by the Congress in its enactment of the specific provisions calling for coöperative action embodied in § 209 of the Federal Power Act and § 17 of the Natural Gas Act. Many of the state regulatory statutes also provide specifically for coöperation with Federal agencies. Statutory provisions for coöperation, however, can be productive of good only when use is made of them. Coöperation cannot be achieved by compulsion. It must spring from a spirit of mutual desire. It is a 2-way proposition and can only succeed when the parties take the action necessary and agreed upon to make the process work. This responsibility rests equally upon the Federal and the state commissions."

—STATEMENT *of Federal Power Commission to Committee on Coöperation between State and Federal Commissions.*

"NOW that we have these many technical improvements in communications, I hope that we will see that the great mass of the people realize the fullest benefits from them. It will be a real challenge to industry to make available as speedily as possible the new facilities which have been developed during the war. It will be no less a challenge to government. Both Federal and state commissions will have increasingly heavy responsibilities in their respective jurisdictions as the communications industry expands. . . .

"At the time of the special telephone investigation, I suggested a plan for the development of a Federal regulatory group which would include accounting, engineering, and legal e perts who could be made available to st commissions. . . .

"As the communications industry expan there will be greater need for coöperati between Federal and state commissions. Co erative studies and procedures have been fru ful in the past but much work lies ahe Matters of depreciation practices, proper ra of return, original cost, Western Electric co and license contracts, Bell system pensi plans, and patent policies will take on add importance as the telephone and telegraph i dustries expand. The postwar expansion of t Bell system alone will involve an extensive r organization of its domestic plant and ent an expenditure of some $2,000,000,0 The magnitude and complexity of the reg latory problems which face us call for uni of purpose and action among all regulato bodies.

"Joint studies and exchange of informati between Federal and state commissions c assist in seeing that the telegraph and tel phone industries adapt themselves to postw conditions and provide a speedier and mo economical service to the people.

"New problems of coöperation no doubt w arise. For example, the developments in rad and the resulting expansion in mobile telepho service may well present problems in the ha dling of which coöperation between Feder and state commissions may be most appro ate, if not essential."

—PAUL A. WALKER,
Vice chairman, Federal Communicatio Commission.

On Bluefield Case Doctrine

"I KNOW of no pronouncement of the United States Supreme Court which has modified the doctrine established in the Bluefield Case in 1923. In this decision the court found that a regulated utility should earn a return comparable to that earned by other enterprises, subject to a similar hazard, in the same general community in which the utility was located; it found further that earnings should be adequate to attract the requ site amount of capital into the enterprise a to protect the financial integrity of the utili But it did not specify, nor could it well do s what constituted an adequate investment capital."

—CLYDE OLIN FISHER,
Member, Connecticut Public Utiliti Commission.

On Valuation

"THE cost concept is supplanting the value concept in the determination of the base figure on which a fair rate of return is to be calculated. . . . But today, artificial and highly theoretical approaches to our rate-making problems appear to have fallen into disrepute. Present requirements demand a scrutiny of actualities, of past and present facts rather than substitute assumptions and theories, and an intelligent forecast of the somewhat im mediate and not too distant future. Continuou analysis of the rate-making elements (capit and operating costs, depreciation, revenue profits, rates of return) and prompt action b commissions, based upon such continuin analysis and scrutiny, are taking the place o long-drawn-out proceedings and litigation the courts. Situations where rates fixed yea

fore by a commission were sustained or disowed years later by the highest courts, and hen such rates at the time of final decision d become unworkable and obsolete—such uations are no longer acceptable to the rateying public and to the regulating commisons. . . . Under your authority we propose rther study and investigation of

"(1) the extent to which the statutes under which the various state commissions function requires the following of principles of rate making and valuation laid down in Smyth *v.* Ames, especially the reproduction cost theory;

"(2) the extent to which the various state commissions are required by their respective state court decisions to adhere to Smyth *v.* Ames;

"(3) the problems facing the state commissions and arising out of the Hope decision in the determination of proper rate bases;

"(4) the problems and possible conflicts that may arise if Federal commissions fix interstate rates on the so-called cost basis, when state commissions continue to fix intrastate rates on the so-called fair value basis."

—REPORT *of Committee on Valuation, Richard Sachse, chairman.*

On Centralization of Power in Federal Government

"RESPECTING all matters of legislation which touch the exercise of state pow, let me make the general observation that is period of postwar readjustment, when ongress is seeking to aid and encourage busiss, is a time when our governmental struc re is peculiarly liable to suffer permanent jury. It is a time when those who would reserve our government as it was established, d came down to us, must be alertly and solutely upon guard. The great drift toard centralization of power in the national overnment, at the expense of the states, in e last twenty-five years, emphasizes this nger.

"I am not an alarmist, but I believe it is evident that unless the people of the nation awake and call upon their Congress to halt the present drift toward centralization of governmental power in Washington, those who come after us will not have a dual government in fact, though the form of it may continue to exist.

"The essential powers of government will be exercised through bureaus of the central government in Washington."

—JOHN D. BIGGS,
President, National Association of Railroad and Utilities Commissioners.

On Excess Profits Tax

"Two major tax bills have been enacted during 1945. The first, approved by the resident of the United States on July 31, 945, is known as the 'Tax Adjustment Act f 1945,' while the second, signed by him on ovember 8, 1945, is known as the 'Revenue ct of 1945.' Both of these acts have made hanges in the Federal tax laws mentioned in e 1944 report of your committee. . . .

"The repeal of the excess profits tax reoved from discussion two of the recomendations contained in our 1944 report. Your ommittee reaffirms its 1944 conclusion that ividends in the hands of stockholders should e made nontaxable income. As said in that eport, 'The income of the utilities which can be distributed to stockholders is taxed in the hands of the corporation, and what is paid in the form of dividends in the hands of the stockholder. In contrast, money distributed by the corporation in the form of wages, salaries, and interest is taxed but once and that is in the hands of the recipient.' This statement is applicable to all corporations.

"Your committee recommends individual income tax credits for stockholders receiving dividends on which the corporation has already paid taxes. This, we believe, would encourage the investment of equity capital in public utility enterprises."

—REPORT *of Committee on Excess Profits Tax, Justus F. Craemer of California, chairman.*

On Investors' Position under Inflation

"SEVERE inflation would . . . compel an adjustment upward, either of he rate base or of the rate of return, for ompanies which built in preinflation years, or before inflation has run its course, to give just compensation. But to meet such a development by increasing rates of return would involve great variations in rates of return, as

between companies owning properties built in different times. Such variations the public would find it difficult to understand. Some companies might receive two or three times the rate of return that other companies would receive.

"The situation, if inflation should occur, would not be clear-cut. Companies would own some prewar property, some built before inflation had proceeded far, and some much later.

"It would probably be easier for the commission to make whatever adjustment justice may require in the rate base than to attempt to meet the equities of the situation by using varying rates of return.

"Whatever way might be taken, plainly a justment in some way would be inevitabl This would be required not only in justice t investors but in obedience to economic la Investors simply will not buy utility securitie if they find that progressive inflation operat to destroy progressively their right to recei just and reasonable compensation for the ser ice their properties render."

—JOHN E. BENTON,
Advisory counsel, National Association o Railroad and Utilities Commissioners.

On Transportation Regulation

". . . despite the emphasis which was placed upon war needs, the period of armed conflict was not unproductive of significant progress in the regulation of transportation agencies. The wartime controls resulted in the adoption of some carrier practices which ought to be retained in the peacetime economy. Moreover, even during wartime, in a nation as vast as ours, there has necessarily been a continuance of many peacetime regulatory functions . . . the past year has been productive of numerous regulatory problems of great complexity and importance. We do not foresee that the forthcoming year will be an easier one for transportation regulatory officials. As the Federal and state agencies continue their program, already well under way, of removing wartime emergency controls, there will be the task of resuming customary peacetime regulatory processes. . . .

"The civilian economy is going to be considerably different than what it was before the war. There have been significant shifts of population and of industry, and the return of peace is bringing new shifts. The development of new industries will require added trans portation facilities in many cases. The antici pated growth of air commerce will unquestion ably have an important effect upon railroad an motor carrier operations.

"All of these potential factors will greatl influence the regulatory pattern and policy o the states and nation in the period ahead. Con gress has already taken steps to examine an evaluate these factors in an attempt to assur the adequacy and efficiency of the nation transportation system to meet the needs of th future. Resolutions for thoroughgoing invest gations are pending in both houses of Con gress, and the House Committee on Interstat and Foreign Commerce has already launched national transportation inquiry. The regula tory commissions of each state may do well t conduct their own individual surveys of th transportation situation as it exists, and as i ought to be developed, to adequately meet th public need."

—REPORT *of Committee on Progress in th Regulation of Transportation Agencies, Ma L. McWhorter of Georgia, chairman.*

On Aviation Regulation

"IN order to provide the form of regulation which is desirable, considerable attention on the part of the states will be necessary. Our past efforts must be continued with increased vigor. Perhaps the states have not made the right approach to the problem of protecting their interests in the regulation of air transportation. I am inclined to the view that we have placed too much reliance on the abstract question of threatened usurpation of states' rights. The factual situation should be developed and analyzed as thoroughly as available sources of data will permit. Greater stress should be laid on the growing importance of intrastate air commerce. The advantages in the public interest of regulation by the states should be emphasized at every opportunity.

"A number of outstanding facts cannot b ignored in considering the subject of local reg ulation of commercial aviation. Stated briefly they are:

"1. The nature of domestic air commerc has so changed that, instead of being virtual ly restricted to the interstate field as former ly, it is now also of great importance locall within many states.

"2. The utilization of the air lines for short haul transportation, and the establishmen of local services, will increase in the future

"3. State regulation will promote, rathe than impair, the proper development of ai transportation. The benefits to the publi will also be enhanced by such regulation.

"4. The division of jurisdiction as betwee

the Federal government and states should be determined by the nature of the traffic; that is, whether inter- or intrastate. The forum should not depend on whether a carrier does or does not operate beyond state borders.

"5. Intrastate services should be governed by local conditions. Transportation efficiency should be promoted by inaugurating local schedules.

"6. The air lines will undoubtedly seek state regulation, because of the local problems with which they will be confronted in the future.

"7. There is no merit to the view that Federal aids in aviation development entitle the Federal government to exclusive economic jurisdiction."

—JUSTUS F. CRAEMER,
Member, California Railroad Commission.

"THERE is this difference between the development of aviation transportation and the development in the past of railroad and motor carrier transportation. Those industries were developed first locally. Long-distance transportation was an expansion of local development. The reverse is true with respect to commercial aviation. . . .

"The right to operate in local air transportation, and the regulations, as to service and rates, which shall apply to such operations, are accordingly matters of vital local interest, and should be subject to local control rather than to bureaucratic determination at the seat of the central government, hundreds or thousands of miles from the scene of those operations."

—JOHN D. BIGGS,
President, National Association of Railroad and Utilities Commissioners.

On Acquisition Cost in Excess of Original Cost

"I SUBMIT that if acquisition adjustment cost is justified in the first instance, and it may well be justified if the evidence is conclusive that it was a necessary concomitant to the realization of the new venture, it is not only unwarranted but perhaps even inequitable to insist that this excess be 'amortized over a reasonable period.' At any rate, a heavy burden rests upon any regulatory commission to assure itself that the excess cost was incurred in the public interest. When so incurred, equity would seem to dictate inclusion in the rate base in exactly the same manner in which the company is permitted to include in its rate base the cost of property when first dedicated to the public use. If only acquisition adjustment cost be legitimate at the time of its birth, it would seem inappropriate at some later period to cast doubt upon the quality of its paternity."

—CLYDE OLIN FISHER,
Member, Connecticut Public Utilities Commission.

On Motor Carrier Regulation

"THE motor carrier industry has developed over a period of less than forty-five years from a few trucks being operated in competition with horses and wagons to a business that is now one of the largest forms of transportation. From a few individual truck owners driving their own trucks doing a pick-up and delivery service to thousands of companies operating 5,000,000 commercial trucks over America's vast network of highways, representing more than half of all the trucks in the world. . . .

"This development occurred, has been aided and solidified by regulation, but, in many instances, has developed not because of but in spite of regulation. It would, therefore, seem pertinent that this association and its membership states should be reminded of the chaotic condition existing in the regulation of motor carriers by the several states. . . .

"The conflict between the laws of the several states governing the regulations of motor carriers has given rise to proposed Federal regulations and laws to bring about unification. This association and this committee have actively opposed the enactment of such legislation. So far, opposition alone has been enough but mere opposition in the future without concurrent action by and between the several states to bring about uniformity will not prevent the enactment of Federal legislation regulating motor carriers. It has been long recognized that the best defense is a strong offense, and the best defense against the enactment of Federal legislation regulating motor carriers and depriving the states of their right to continue regulations must necessarily be coöperation between the states in the enactment of laws or amendments of existing laws, so that reasonable unification can be accomplished by the states which not only will prevent the enactment of but will eliminate the necessity for the enactment of Federal legislation. . . .

"Many of the states have become conscious of the constantly growing threat of Federal regulation of motor carriers. Recognizing this danger the state legislatures of the several states this far in 1945 have been more active in the consideration of legislation pertaining to the regulation of motor carriers than in

any preceding year since the beginning of World War II. Consideration has been given to gasoline and Diesel fuel tax, size and weight limitations, and reciprocity.

"Bills were introduced in 19 legislatures concerning increased gasoline taxes and tax on Diesel fuel used on highways. . . . Bills were introduced in 34 states concerning limitations as to size and weight of motor vehicles. . . .

"Arkansas, Indiana, Maine, and South Carolina enacted new or mandatory reciprocity bills.

"Bills were introduced in the legislatures of 43 states concerning the taxation of motor vehicles. Twenty of these bills were enacted into law.

"Bills relative to the regulations of motor carriers were considered by 42 states. Bills bearing this subject matter became law in 37 states."

—REPORT *of Special Committee to Promote Uniformity of Regulations Affecting Motor Carriers, Lawrence W. Cannon of Indiana, chairman.*

On Lack of Judicial Formula for Rate Making

"IT is true that commissions today may proceed to determine a rate base with somewhat less trepidation than they felt formerly, but that is not because they have any more settled and certain rules for making their determination than before. It is because the United States Supreme Court has retreated from an attempt, which it made for a time, to direct the rate-making process by judicial rules. Determining the rate base is easier now than it was a decade or two ago because of this relaxation of judicial effort to control rate making, not because the real problem before the rate-making agency is one whit different now than it was then. . . .

"It would make life for commissioners very easy, so far as rate making is concerned, if the United States Supreme Court would develop a formula for making rates, so that the commissioners never would be called upon to do any thinking about it at all, but might merely put their staffs at work, to ascertain from company books and from other sources certain facts which, upon application of the formula, would automatically establish the amount of return the regulated company might demand, as of right. The Supreme Court, however, has stated, over and over again, that this cannot be done.

"It would help just as much to relieve commissioners from thinking, and from the responsibility of making decisions affecting the rights of security owners and the interests of the public, if the court would develop a formula for determining the rate base and another formula for determining the fair rate of return. The two together would enable rates to be determined without fear and without reproach. The staff would do the work and the Supreme Court would bear the blame.

"The court, however, has not done that, and in my humble judgment never will, for the simple reason that rate making is legislation: and legislation demands the action of free agents. It cannot be directed, because it must be shaped to meet the need for which it is enacted. The people, in their constitutions, may limit the legislative power of their legislature, but it is impossible to direct the exercise of that power. . . .

"The method of making rates by determining what amount a company is entitled to earn upon and what rate of return upon that amount it is entitled to earn and, then, of prescribing rates designed to produce that rate of return on that amount has grown up during more than fifty years of regulation. Until a better method shall be devised, that method will doubtless continue to be generally used. A commission's duty, however, is to form a judgment as to what scale of rates will do full justice to the public and to utility owners, and to prescribe that scale. A commission cannot properly adopt a working formula, and then just 'go it blind.' If the rates produced by any computation are manifestly unjust to the public, or to the company, they must be adjusted by a change of the rate base, or of the rate of return, or by such other modification as will make them, in the judgment of the commission, fair rates."

—JOHN E. BENTON,
Advisory counsel, National Association of Railroad and Utilities Commissioners.

On Property Investment Prior to Regulation

"ONE aspect of the Hope decision which troubles me is the refusal of the court to give any answer to the claim that the rate base should include some $17,000,000 spent in the drilling of wells and charged to operating expense prior to the period of regulation of the natural gas industry. The court found that the $2,000,000 or so earned constituted a fair return on the thirty-three million odd dollars representing the depreciated plant investment. And it concluded that the end result was equitable, therefore obviating the necessity for reaching any conclusion as to whether the $17,000,000 of drilling expense should or should

not be included in the rate base. But this is merely a begging of the question. If $2,000,000 constitutes a fair return on $33,000,000, and no more than a fair return, it follows as night follows day that it falls short of a fair return on $50,000,000, the base in the event that the $17,000,000 of drilling expense be counted in the rate base. The court side-stepped this issue and has left us completely in the dark as to the propriety or impropriety, from the legal point of view, of including in the rate base sums of money expended before the day of regulation and charged concurrently to operating expense when expended. I do not see how we will be able to escape endless controversy and confusion until such time as the judiciary throws the legal searchlight upon this issue."

—CLYDE OLIN FISHER,
Member, Connecticut Public Utilities Commission.

On Responsibility for Rate Making

"UNDER every government, responsibility for action must rest somewhere. Under our system of government the responsibility for establishing rates rests upon the members of our regulatory commissions. If they fail to act fairly and intelligently, the public will suffer in the end. For that result there should be no divided responsibility. It should rest without question upon the commissioners exercising legislative power to make rates."

—JOHN E. BENTON,
Advisory counsel, National Association of Railroad and Utilities Commissioners.

On Telecommunications Developments

"PRIOR to Pearl Harbor, great technological advances in communications had been made, but the remarkable developments which have come from recent war research promise to surpass any of those which took place in the previous century. Dazzling before us are the brilliant prospects of a new electronics era which may very well revolutionize life on this planet. Much of the conventional technology of prewar days may become obsolete as we make use of new devices and facilities to build a better world.

"One important result of intensified military research is a tremendous expansion of the useful radio spectrum. . . .

"The recent improvement in transmitters, receivers, and highly directional antennas for use on the higher frequencies will make possible the inauguration of nation-wide radio relay systems. . . .

"The application of a new technique known as 'pulse time modulation,' sometimes referred to as 'pulse position system,' to radio relay promises to improve telephone and telegraph service still further. . . .

"Another development which will provide additional facilities for long-distance communication is the extension of coaxial cable systems throughout the country. . . .

"I should not fail to mention the possibilities of the expanded use of dial telephones. Indications are that it may not be long until an operator may dial a call straight through to a telephone across the nation without the aid of other operators. . . .

"By the application of new facilities and techniques which have come out of recent research, we can expect to have wider use of certain special types of communication services which have heretofore been available only to a limited extent. One of these which has dramatic possibilities is the Citizen's Radio. . . .

"Thus by means of radio, citizens in the same community may move from place to place and maintain 2-way conversation. . . .

"These instruments will be compactly built so that they may be carried with comparative ease and will be made at costs that many of our citizens can afford. The Federal Communications Commission has already assigned a band of frequencies for walkie-talkie transmission and it should not be too long until many of them will be in use. . . .

"Along this same line, I mention the prospects for radiotelephony in the general mobile service. This will provide 2-way voice communication to drivers of motor vehicles. . . .

"Recent experiments have proved that radio communication from front to rear of trains, from train to train, as well as from railway station to train can be used effectively. The safety and security implications of this are very great. . . . Some mention should be made of developments in the field of public broadcasting. Frequency modulation, popularly known as FM, a new technique developed in the 1930's, is on the verge of an expansion so great that it may soon rival or even surpass our present system of broadcasting. . . .

"Commercial television will soon be ready to move ahead. The commission recently set aside new bands of frequencies for experimentation, which promise to provide excellent black-and-white pictures as well as those in natural colors. . . .

"It is not visionary to predict that in the future television as well as facsimile may be combined with telephony. Two people talking

long distance may be able to see as well as hear each other. . . .

"Radar, the new technique which had so much to do with winning the war, will have important peacetime applications. It is possible to detect objects several hundred miles away, calculate their speed if they are moving, and note their direction. . . .

"Another fascinating development is visual speech. I had the opportunity recently of seeing a device which transformed sound into patterns on a screen for ready interpretation by the eye. By this new technique it is possible to visualize the variations in pitch, volume and time. Its greatest immediate potential value probably will be in teaching the deaf of which there are more than 100,000 in this country, and affording them an intelligible means of communication by telephone. . . ."

—PAUL A. WALKER,
Vice chairman, Federal Communications Commission.

On Depreciation Reserves

"THE return of a portion of the investment to owners—that is, the denial of their right to get a return on additional plant investment financed by the depreciation reserve—would represent, in effect, a refusal to give to the owners the privilege of financing an expansion as an appropriate offset to their obligation to find the funds for such expansion when needed. This presents the crucial difference as to whether, in return for the obligations assumed, the owners have received an inviolable privilege to supply additional funds. It is even alleged that such a restriction upon the perquisites of ownership represents a change in the rules of the game subsequent to a financial commitment made in good faith.

"A somewhat more substantial attack upon net investment, and one which I confess I have been unable to answer to my own satisfaction, is the charge that the use of net investment gives to management a financial incentive for the premature retirement of stand-by plant. [Samuel Ferguson, 'Cost As a Substitute for Value in Utility Rate Base Determination; A Comment upon Bauer's Position,' *Yale Law Journal*, September, 1944, pages 721-732. Samuel Ferguson, 'Further Comments on the 1944 NARUC Report,' *The Journal of Land and Public Utility Economics*, May, 1945, pages 181-184.] I shall not take the time to give a mathematical illustration of this alleged financial albatross. Suffice it to say that when a company has a substantial depreciation reserve there may be a temptation to scrap stand-by plant, wholly adequate for stand-by purposes, even though inefficient for continuous operation, and thereby lessen the depreciation reserve with the consequent enhancement of net investment in the plant. I think in all fairness it must be admitted that such a financial temptation may be presented to management and that the result, if the temptation is embraced, will be unfortunate. It is no answer to this danger to cite a like danger from the use of undepreciated plant as a rate base; namely, the temptation to retain long beyond its period of justification plant that should be given an honorable burial."

—CLYDE OLIN FISHER,
Member, Connecticut Public Utilities Commission.

On Rate of Return Analogous to Interest

"WHILE the rate of return is not interest, but a mere multiplier used in computing the gross amount of compensation a company is entitled to receive, it is analogous to interest. Inevitably, investors and the general public think of it as expressing the commission's judgment as to the percentage of return, in interest, or dividends, which investors are entitled to receive upon their investments in utility properties; and perhaps commissioners and judges often think of it that way also. For this reason, probably it is better that any adjustment necessary to produce a just result, under a rate of return approximating the current interest rate, should be made by raising or lowering the rate base rather than by a departure from such approximate rate."

—JOHN E. BENTON,
Advisory counsel, National Association of Railroad and Utilities Commissioners.

On Transportation Rates

"IT is interesting to note that during the World War I period there was a rapid and very drastic increase in transportation rates, while during the period of World War II, despite a large increase in operating costs, rates, particularly of railroads, have remained

comparatively stable, and, generally speaking, the trend has been downward, rather than upward. . . .

"In December, 1941, the class I railroads of the United States petitioned the Interstate Commerce Commission for a flat increase of 10 per cent on all fares published in its passenger tariff and a uniform increase of 10 per cent in all freight rates, with the exception of coal and coke, where increases requested were based on a fixed amount per ton. . . .

"In Ex Parte 148 the Interstate Commerce Commission authorized a 6 per cent increase on general commodities and a 3 per cent increase on agricultural products and certain other raw materials, which became effective March 18, 1942 . . . by order dated October 30 ,1945 . . . six months after the legal termination of the war . . . all increases, including passenger fares, authorized under Ex Parte 148, 'shall automatically expire, unless sooner vacated or modified.' . . . the operating revenues of the class I railroads [for 1944] were $9,436,789,812, and the operating ratio of expenses to revenues was 66.6. For the first eight months of 1945 the operating revenues were $6,251,217,314, and the operating ratio of expenses to revenues was 68.7.

"Turning now to net railway operating income, which really tells the story of the financial condition of the rails, we find that the class I railroads are doing very well. . . .

	Net Income (000)	*% Increase*	*% Increase Over 1939*
1944	$1,106,310	—18.6	87.9
1945*	722,678	— 4.1	

* First eight months only.

"The maintenance of way, structures, and equipment would appear to have been adequate during the late war period, as the expenditures for that purpose have steadily mounted from year to year by very substantial sums."

—REPORT *of Committee on Rates of Transportation Agencies, C. A. Merkle of South Dakota, chairman.*

On Net Plant Investment

"THE evidence examined herein points in my judgment to the desirability of using as a rate base net plant investment plus working capital. Despite the arguments that can be presented against the acceptance of this principle, there are more arguments and there is more weighty evidence against the acceptance of any available alternative. If net investment is used as the principal foundation stone for the rate base, it follows that appropriate modification should be made in the light of surrounding circumstances as related to any particular company. Some of these modifications I have indicated in the disposition of acquisition adjustment cost, the treatment of depreciation reserve, the proper procedure in the accelerated plant amortization for tax purposes, and otherwise. In short, I see no magic wand which will be made available to commissions for the purpose of deducing the right answers by the application of any chart. There is no likelihood that regulatory commissions will be in a position to make of themselves bureaucratic robots and rest upon their laurels to the extent of having their minds atrophied from nonuse."

—CLYDE OLIN FISHER,
Member, Connecticut Public Utilities Commission.

Report of the Washington Office

"THE work of the Washington office during the past year has been arduous but not spectacular. Much of our time, as in past years, has been taken up with matters of a routine nature, such as the preparation of our bulletins, the constant check we are required to make of the activities of Congress, and conferences and correspondence with the various committees of the association and with the executive officers.

"A great deal of our time has also necessarily and willingly been given to matters which are not routine, but which are of interest primarily to one or a few commissions, and not to the membership generally. In this category falls an immense volume of correspondence with individual commissions and commissioners, dealing with particular regulatory problems in which they are interested. In this category, also, are the preparation of briefs, participation in numerous conferences, and representation of individual commissions in proceedings before the Federal agencies and in the Federal courts.

" . . . my associates and I want the commission in each state to understand that it is the purpose of the association that your Washington office shall be, in effect, a branch office of each state commission."

—FREDERICK G. HAMLEY,
General solicitor, National Association of Railroad and Utilities Commissioners.

The March of Events

First Deficiency Bill

PUBLIC power features in the First Deficiency Appropriation Bill for 1946 last month gained congressional approval, but only after encountering surprisingly strong opposition in both the House and Senate Appropriations committees. The House rejected a committee recommendation to eliminate rivers and harbors items containing hydroelectric power projects.

Reclamation Bureau also won back some transmission line funds over House committee objections. The Senate committee refused Reclamation $780,000 for a transmission line from Oroville to Sacramento in California's Central valley, and this item was returned after heated debate on the Senate floor. Other Central valley transmission-line projects, eliminated in the House, were left out.

Hearing Postponed

THE Federal Power Commission has postponed to February 4, 1946, the hearing previously set for December 17th to determine the reasonableness of interstate wholesale electric rates charged by Pennsylvania Water & Power Company and by its wholly owned subsidiary, Susquehanna Transmission Company of Maryland. As originally scheduled, the hearing will be held in the commission's hearing room at Washington, D. C.

The investigation of the Pennsylvania Company's rates was instituted as a result of petitions filed by the Maryland Public Service Commission and by counsel for the mayor and city council of Baltimore, Maryland, county commissioners of Baltimore county, Maryland, Bethlehem-Fairfield Shipyard, Inc., and Rustless Iron & Steel Corporation. Later the investigation was enlarged to include the rates subject to FPC jurisdiction charged by Susquehanna Transmission Company of Maryland.

Gets FPC Authorization

THE Federal Power Commission last month granted a certificate of public convenience and necessity to the Frannie Gas Company, Frannie, Wyoming, authorizing it to continue operation of its 8-mile, 3-inch gas transmission pipe line extending from the Polecat gas field in Park county, Wyoming, to a point on the Montana-Wyoming state line, and a 5-mile, 2-inch connection to the Yale Pipeline Company's pumping station near Warren, Montana.

The Frannie Gas Company, which is engaged in purchasing natural gas in the state of Wyoming and transporting the gas through its transmission line into the state of Montana, proposes to operate the above-described facilities to distribute natural gas to consumers in the towns of Frannie and Deaver, Wyoming, and to the Yale Pipeline Company and other ultimate consumers in Warren, Montana. According to the company's application the continued operation of such facilities is required to maintain adequate service to such consumers.

FPC Continues Proceedings

THE Federal Power Commission has ordered that the hearing scheduled to be held in Chicago on December 10th on applications of the Natural Gas Pipeline Company of America, Texoma Natural Gas Company, and Chicago District Pipeline Company be postponed until January 8th and that the applications be heard jointly with an application filed by the Michigan-Wisconsin Pipe Line Company in Washington, D. C.

Consolidation of the proceedings in connection with these applications has been effected, according to the commission's recent order, because "the proposed construction and operation of the facilities covered by the application of Michigan-Wisconsin Pipe Line Company, Docket No. G-669, would be utilized in part to supply natural gas to areas which Natural Gas Pipeline Company of America proposes to serve if granted certificates of public convenience and necessity in the proceedings in Docket Nos. G-231 and G-651."

Slaff Resigns As Counsel

THE Federal Power Commission last month announced the appointment of Burton N. Behling, special assistant to the commission, to act as director of the natural gas investigation, Docket G-580, and the resignation of George Slaff as chief counsel for the investigation.

Mr. Slaff was reported to be leaving the commission about December 31st to accept a position as counsel for Goldwyn Productions, Inc.

Mr. Behling has been a member of the com-

mission's staff since September, 1944, and has been active in the investigation. Before coming to the commission, he was director of the investigation of public aids to transportation for the Board of Investigation and Research from 1941 to 1944. For several years prior thereto he was economic and statistical analyst on the staff of the Interstate Commerce Commission.

Olds Elected FPC Chairman

THE Federal Power Commission at its meeting on December 14th unanimously elected Commissioner Leland Olds of New York as its chairman for the remainder of his present appointment, which expires June 22, 1949.

The commission also unanimously elected Commissioner Nelson Lee Smith of New Hampshire its vice chairman for the remainder of 1945 and for the calendar year 1946.

Chairman Olds was first appointed a member of the FPC in June, 1939, and was reappointed in 1944. He served as chairman of the commission from January, 1940, to June, 1944, and since September, 1944, has served as vice chairman. In resuming his duties as chairman, Mr. Olds succeeds former Commissioner Basil Manly, who resigned as chairman and member of the commission on October 1, 1945, to enter private business.

Mr. Olds was executive secretary of the New York State Power Authority from 1931 to 1939 and in 1936 served as a member of President Roosevelt's commission to study coöperative enterprise abroad.

Byrd-Butler Bill Signed

WITH "much satisfaction," President Truman last month signed a bill strengthening the control of Congress over government corporations with assets estimated at $20,000,000,000.

"In requiring these corporations to submit their budgetary programs to the Bureau of the Budget and their expenditures to an audit by the General Accounting Office, the Congress has made a forward step in furthering the businesslike management of government," Mr. Truman said in a statement.

The President said that because of the lateness of the time it would not be possible to include budget programs for the corporations in the budget he submits to Congress in January, but added: "I shall, however, submit by next spring these corporations' budgets for the fiscal year beginning July 1, 1946."

The Tennessee Valley Authority won its fight to handle its own money. The Byrd-Butler Bill gives TVA alone, of numerous government agencies affected, the right to decide how much revenue to keep and how much to turn back to the United States Treasury. Under the bill TVA continues to handle its money as it has previously. That means TVA continues to operate its own revolving fund without having to ask Congress for money for repairs and maintenance.

Deal Gets SEC Sanction

THE Securities and Exchange Commission on December 12th released jurisdiction over the proposed sale by the Florida Power Corporation, a subsidiary of the General Gas & Electric Corporation, of gas properties to the Savannah-St. Augustine Gas Company for a base price of $1,165,000.

On September 7, 1943, the commission granted applications whereby the Florida Public Service Company, the Sanford Gas Company, and the Santa Fe Land Company, all subsidiaries of General Gas & Electric, were merged into Florida Power. The SEC stipulated, however, that within one year of the merger Florida Power should divest itself of all water, gas, and ice properties owned by it, other than the ice plant in Orlando, Florida, the water properties servicing Winter Garden, Florida, and all land obtained as the result of the merger of the Santa Fe Land Company.

The commission said sale of the gas properties marked compliance with its order. The only change listed in the proposed sale was a $45,000 reduction from the original price of $1,210,000.

Congress Adopts Reorganizing Bill

THE Senate and House completed action on December 13th on a compromise bill to empower the President to reorganize and contract the executive establishment, but sent it to the White House with some conditions attached as to "quasi judicial" and other agencies. The President was expected to sign the measure and to submit his first reorganization programs in the new year.

Exempted from reorganization except that functions, agencies, and personnel may be transferred to them, are the Interstate Commerce Commission, Federal Trade Commission, Securities and Exchange Commission, National Mediation Board, National Railroad Adjustment Board, and Railroad Retirement Board.

The civil functions of the Corps of Engineers of the Army are put on an absolute "touch not" list, as were the General Accounting Office and the Controller General, which are direct agents of Congress.

Exempted, but only to the extent that if reorganized they must be dealt with separately and under plans which affect no other agency, are the Federal Deposit Insurance Corporation, Federal Communications Commission, Tariff Commission, and Veterans Administration.

The House accepted unanimously the adjustment of differences between the two

houses, under which there were dropped from total or partial exemption rolls the Federal Power Commission, Federal Land Bank System, Civil Service Commission, and Maritime Commission.

In the Senate, approval was by a 48-to-23 vote, after Senators Vandenberg and LaFollette had noted the relegation of the FDIC to secondary exemption, and, on Mr. LaFollette's part, also the leaving of the FPC "naked to the winds," as he put it.

Gas Company Would Expand

THE Kansas-Nebraska Natural Gas Company, Inc., Phillipsburg, Kansas, has asked Federal Power Commission authority to construct and operate additional facilities in Nebraska and Kansas, estimated to cost $1,575,000.

The FPC announced last month the company seeks to construct more lines and compressor facilities to increase the amount of gas transmitted from the Hugoton field, to replace some pipe lines, and to acquire about 38 miles of line from the Central Electric & Gas Company.

Gas Companies to Merge

IN a move aimed at further simplification of one of the nation's largest natural gas companies, Stuart M. Crocker, president of the Columbia Gas & Electric Corporation, last month announced that two of the Columbia system's operating groups would be combined under one management on January 1st.

The company's Seaboard group, which operates pipe-line and distribution facilities through Kentucky, West Virginia, Virginia, and Maryland, will become part of the Charleston group which comprises production, transmission, and distribution properties in West Virginia, Kentucky, and Ohio.

Harry A. Wallace, Jr., president of the Charleston group of operating companies, will assume the presidency of the new group. Oliver S. Hagerman, president of the Seaboard group, will become vice president and general manager.

California

Track Removal Approved

APPROVAL has been given by the state railroad commission of the agreement between the city of Oakland and the Key System calling for removal of tracks and repaving of streets, it was announced last month by Charles R. Schwanenberg, city manager.

Under the agreement drafted last November, the utility will pay the city $244,000 to defray the cost of removing the rails and repaving the streets. Key officials said they could make no estimate of the date when work of changing over the system would begin. They said that an order for 25 trolley coaches was awarded eighteen months ago and they do not know when the equipment will reach Oakland.

Schwanenberg estimates that it will take a year to complete the work and for the company to obtain the new equipment.

Colorado

Interested in Pipe Line

TWO parties have expressed interest in construction of a gas pipe line from the Rangely oil field in western Colorado to the booming town of Rangely, the state public utilities commission announced recently.

One, the commission said, is E. R. Ziegel of Olathe, Colorado, who has filed application for a permit to construct and operate the proposed 7-mile pipe line. Ziegel stated in his application that he planned to secure the gas by purchase or lease from one of the drillers, and sell it for commercial use in Rangely.

The other, an unnamed party represented by attorney, was seeking further information.

District of Columbia

Transit Crews Get Back Wages

OVERTIME back pay of approximately $100,000 will be distributed to about 2,400 Capital Transit Company workers some time early this month, it was announced recently by J. E. Heberle, vice president and controller of the company.

Testifying at the arbitration board proceedings on the wage dispute between the company and employees, Mr. Heberle said the payment would be made as a result of an agreement

reached between union and company officials.

The cash will be disbursed to motormen, conductors, and bus operators for overtime which the arbitrators awarded last August under terms of a contract which ran for the fiscal year July 1, 1944, to June 30, 1945.

Mr. Heberle explained that under the award a very complicated formula had been set up to pay the men $78,504, but clerical work would have taken nearly two years to work out details. A committee of the union met with company officials early last month, Mr. Heberle explained, and it was agreed that a more simple formula would be used to expedite the payment. The simpler formula will result in raising the cash due the men to about $100,000.

Iowa

Asks to Sell Gas

An application for authority to sell natural gas to the Iowa Electric Light & Power Company for distribution to retail customers in Boone has been filed with the Federal Power Commission by Northern Natural Gas Company of Omaha, Nebraska.

The commission announced on December 15th that Northern Natural also has asked for a rehearing, reconsideration, and modification of an FPC order of last November 6th denying application to sell natural gas to Iowa Electric for use as boiler fuel in Iowa's Boone electric generating plant.

FPC's order limited such sales of gas to use for operation of pilot burners, ignition purposes, and emergency stand-by in case of a breakdown of coal-burning equipment.

The petition for rehearing challenged the order on the ground that the proposed sale for boiler fuel use would be a direct sale for immediate consumption and not subject to the commission's jurisdiction.

Kansas

REA Project Resumed

The Smoky Valley Electrical Coöperative Association, which was working on a rural electrification project for territory near Lindsborg prior to the war, has resumed activities and is adding additional customers.

Oliver Hawkinson, president, said the electricity would be furnished by the Lindsborg municipal plant.

Kentucky

Immediate Cut Sought

Winding up its complaint against electric rates in Louisville, the city recommended last month an immediate, temporary reduction there amounting to $1,200,000. City counsel further asked the state public service commission to order a permanent reduction of Louisville Gas & Electric Company's electric charges of $3,400,000 a year after the utility firm has had a chance to present its views on a temporary reduction.

Spencer W. Reeder, Cleveland, special counsel for the city, told the commission the rates could be reduced by $3,500,000 and leave the company a 5½ per cent return on its combined net investment, based on 1944 figures and including repeal of the excess profits tax.

The city's original complaint against the company asked a $3,400,000 annual reduction in electric rates. The company moved for dismissal of the complaint and this was said not to be under the commission's consideration.

After the city's suggestion that rates be lowered temporarily, and later permanently, the commission allowed the city until December 24th to file a supplemental brief. The company was given ten additional days in which to reply.

In reopening the city's case on December 11th, over an objection by the utility firm, Reeder stated his purpose was to introduce evidence designed to show the situation since repeal of the excess profits tax, effective January 1st. He said he did not desire to present any situations that might have existed under various hypothetical assumptions.

The city offered only one witness, the company none, and there was no cross-examination of Edward L. Dunn, Washington, supervising accountant for the Federal Power Commission, who, on loan to the city, gave the testimony.

Charles W. Milner, company attorney, objected on grounds that the city previously had closed its case and the company asked for a dismissal; that 1944 figures, used by the city in its testimony, are not applicable to rates in 1946 and a peacetime estimate also would not be applicable to 1946 rates.

Report on Excess Profits

THE state public service commission last month took first action under its show-cause order that may lead to reduction of private utility rates in Kentucky commensurate with excess profits taxes paid the Federal government as wartime revenue.

Of 23 utilities ordered to show cause by December 4th why their rates should not be reduced, now that Congress has repealed the excess profits tax effective January 1st, the commission:

1. Granted additional time to six.
2. Took under advisement the response of three which reported paying excess profits tax, but urged that reduction of their rates is not justified.
3. Took under advisement the response of one that reported paying the tax, but offered more information relating to it.
4. Received the response of 12 which reported they paid no excess profits tax in 1944 and have accrued none for 1945.
5. Failed to hear from the Citizens Telephone Company, Covington.

The commission, when it issued the show-cause order last November, announced it could identify between $4,500,000 and $5,000,000 in annual reports as having been paid out in excess profits taxes in 1944. Six of the utilities reporting on December 4th admitted $1,177,321 in 1944 in excess profits taxes. The total did not include what may be reported later by the Louisville Gas & Electric Company, and the Kentucky-West Virginia Power Company, Ashland.

LG&E was given until December 21st to submit reports pursuant to the show-cause order.

Gas Franchises Approved

THE state public service commission on December 11th approved the Natural Gas Distributing Company's bidding on franchises at Lebanon, Springfield, Bardstown, and New Haven.

These towns are now without natural gas service. There were no protests against the company's proposed entrance into the four towns and to serve rural customers along its pipe lines in Marion, Washington, Nelson, and LaRue counties.

John E. Buckingham, former state treasurer and vice president of the newly organized firm, said his company proposed to install systems for the area that would cost about $800,000.

The company plans to buy its gas from the Tennessee Gas & Transmission Company, connecting with the pipe lines five miles from Lebanon.

The new company, chartered last November to establish gas service to several counties in the central and south-central area of the state, would charge identical rates for rural and city consumers, he testified. The base would be $1.50 a month minimum, with the scale for consumption ranking from 10 cents to 4 cents per hundred cubic feet.

Urges End of Union

AN examiner for the National Labor Relations Board last month recommended that the Louisville Railway Company disband, as a company-dominated union, the Union of Louisville Railway Employees, and reinstate one worker who was discharged, allegedly for union activities.

The examiner's report, made on the basis of a hearing conducted in Louisville in October by counsel for the NLRB and the CIO and AFL, also recommended that the discharged worker be reimbursed for pay lost from August 14, 1945, and that all the so-called company union's members be returned their dues paid into the union's treasury from that date.

Both John E. Tarrant, attorney for the company, and Charles W. Morris, attorney for the ULRE, said they would appeal the decision.

"The independent union will ask for oral argument before the board and take all the steps necessary to protect its entity," Morris said.

Louisiana

Rate Inquiry Ordered

A THOROUGH investigation into all public utilities in Louisiana with the intent of ordering a general reduction in rates for the benefit of the public, where possible, was begun on December 14th by the state commission.

All electric power, gas, water, and telephone companies will be asked to attend preliminary hearings and to make their books and other records available to the commission's investigators, C. W. Coleman, acting secretary, said.

The inquiry will cover all such public utilities in the state, Coleman asserted, except those operating within the city limits of New Orleans and municipally owned utilities, over neither of which does the commission exercise control.

Twelve electric power firms were cited to appear before the commission to show cause why their "rates, charges, and practices for electric services" within the state should not be investigated, why books and other records should not be placed at the commission's disposal, why any such charges which may be found to be unreasonable and unjust should not be modified, revised, or reduced and, if so, why such reductions should not be made applicable back to the date of the citation.

Maryland

Tax Pact Signed

AN agreement on back taxes owed the city by the Baltimore Transit Company, under which the company will pay $401,246.21 in settlement of the city's claim, was signed recently by Judge Joseph Sherbow, in the circuit court.

Thus was ended a controversy which began more than a year and a half ago when Simon E. Sobeloff, city solicitor, charged that the company owed some $900,000 on net income for the years 1942 and 1943. On the other hand, the company said its obligation had been discharged with the payment of $145,856.

Michigan

Phone Rebates Ordered

THE state public service commission on December 14th ordered the Michigan Bell Telephone Company to rebate $3,500,000 to its customers for each of the years 1944 and 1945 and to reduce its rates for 1946 by a similar amount. The $7,000,000 rebate ordered for last year and this year was primarily to avoid excess profits tax liabilities, while the order for 1946 was based on the contention that the company's rates were unreasonable, the commission said. The company was instructed to submit a plan within fifteen days for distribution of the rebates for 1944 and 1945.

At Jackson, Michigan, the Consumers Power Company announced that it would reduce bills for December 20 per cent in compliance with an order issued on December 13th by the commission. The reduction will save customers about $1,000,000.

Votes for Seaway

BY a vote of 2 to 1, delegates at the annual convention of the Michigan Federation of Labor, held in Detroit last month, approved a resolution urging that Congress adopt enabling legislation to complete the Great Lakes-St. Lawrence waterway.

Considerable debate marked the resolution in committee session and on the floor. Objections to the resolution were voiced by the delegates from railroad and marine unions.

Asked to Halt Ford Gas Deals

ACTION to prevent the Ford Motor Company from buying industrial gas directly from the Panhandle Eastern Pipe Line Company was taken by the state public service commission last month at the request of the Michigan Consolidated Gas Company.

The gas company informed the state commission that it stood to lose $1,000,000 a year because the Panhandle Eastern was "attempting to invade our distribution area" and sell direct to the Ford Company "at undirected rates." The commission sent an "urgent" message asking the Federal Power Commission to enjoin Panhandle from selling to Ford pending a Federal-state inquiry.

Missouri

MVA Denounced in Report

THE majority of the Missouri state MVA commission early last month agreed on a report to the governor denouncing the proposed Missouri Valley Authority and upholding in detail the Pick-Sloan plan for control of the river basin.

Sharply critical of the idea of a centralized regional authority for the basin, this majority report largely is an expansion of ideas stated briefly in the unanimous report of the commission filed November 28th. However, it goes further than the unanimous report did in favoring work by the Army Engineers, Bureau of Reclamation, and other existing Federal agencies under the Pick-Sloan plan. It also attacks the principles of the Tennessee Valley Authority, the pattern for MVA, although conceding that, on the whole, "TVA has done a good job and the people in that area like it." The majority report was prepared by one of the commissioners, L. T. Berthe, Charleston consulting engineer. Joining him in it were State Senator Edward V. Long (Democrat), Bowling Green; State Representative Earl S. Cook (Republican), Trenton; and State Representative Marvin M. Wright (Democrat), Salisbury.

The only members not siding with Berthe were State Senator Claude B. Ricketts (Republican), St. Louis, the chairman, and Fred V. Heinkel of Robertsville, president of the Missouri Farmers Association, both supporters of the MVA principle.

Emphatic opposition to the application of the Pick-Sloan plan for Missouri river basin control to the state of Missouri was expressed by State Representative Cook in an individual report prepared for the governor. Cook op-

poses the Murray Bill as "a gigantic socialistic scheme which would virtually wipe out states' rights and place our affairs in the hands of an autocratic board not responsive to the people."

New York

Fair Submetering Rates Asked

BUILDING owners in New York city submetering electric current to tenants on December 16th announced the formation of a joint committee to obtain an "equitable" adjustment of proposed new rate schedules now before the state public service commission. The Real Estate Board of New York and the Midtown Realty Owners Association have combined to seek such change in the wholesale rate as will allow sufficient margin to repay owners for the use of their equipment and the services they perform in making Edison Company current available to tenants.

A combined public utilities committee has been formed to fight for the "fair" adjustment and includes Morton J. Cross, J. Clydesdale Cushman, Robert W. Dowling, Hugh A. Drum, Douglas L. Elliman, Lawrence B. Elliman, Robert Louis Hoguet, Charles F. Noyes, Aaron Rabinowitz, Elmer Settel, Leo Schloss, and Edmund F. Wagner.

A management subcommittee headed by Arthur C. Bang, chairman of the realty board's public utilities committee, will be in charge, with Mr. Noyes acting as treasurer. Harold J. Treanor and Morway Picket have been engaged as counsel, and the group also has engaged Dr. John Bauer, rate expert, and Edgar J. Kates, engineer and specialist in Diesel power. Declaring the two organizations favor reduced rates and will fight only against discrimination, a statement issued on behalf of the combined committee said in part:

"The financial squeeze on building owners who have millions of dollars invested in conduits, meters, and other equipment and who employ staffs headed by experts in servicing consumers stems from the fact that their agreements with tenants provide in effect for billing current at whatever rates are charged by the utility.

"The Consolidated Edison Company, as a condition of permission to merge other companies with itself, proposed new rate schedules calculated to effect a $6,000,000 cut, which granted reductions to users in the residential and general commercial classifications and to no others, whereas the Public Service Law states that the rates shall be reasonable, equitable, and fair."

North Carolina

FPC Disposes of Claimed Cost

THE Federal Power Commission on December 14th announced its disposition of claimed actual legitimate original cost of the Waterville hydroelectric project (Project No. 432), Carolina Power & Light Company, Raleigh, North Carolina, licensee. Out of a total of $13,898,819 under consideration, the commission order allowed a total of $13,148,586 as actual legitimate original cost of the project as of December 31, 1932, and disallowed $750,233 claimed by the company as cost.

The determination was reached following a prehearing conference between members of the FPC staff and representatives of the company at which a stipulation was executed by the participants and filed in the case record.

The Waterville project is located on the Big Pigeon river in Haywood county, North Carolina, and has an installed capacity of 108,000 kilowatts.

Wyoming

Utility Bid Accepted

ENGINEERS PUBLIC SERVICE COMPANY last month announced its directors had accepted the W. C. Gilman and associates bid of $843,000 for common stock of Western Public Service Company, Engineers subsidiary, as the highest of five in competitive bidding.

Transfer of ownership will take place after approval of the Securities and Exchange Commission is obtained. The public utility property is located at Laramie, Wyoming.

The purchase contract provides for an adjustment of the bid price for excess of net current assets and for other adjustments, and also provides that at the closing Western Public Service will pay a note to Engineers of $508,800, making a total realization to Engineers of $1,351,800 subject to such adjustments.

The purchasers do not contemplate changing the existing local management, personnel, or policies of the company.

The Latest Utility Rulings

Butane Gas Tanks Approved by Commission Cannot Be Declared a Nuisance

A JUDGMENT granting an injunction against the construction and maintenance of butane gas reservoirs near the residence of complainants was reversed by the court of civil appeals of Texas upon a showing that commission regulations had been complied with. The lower court had ruled that the gas storage was a continuing menace to the life and property of the plaintiff and to nearby residences.

The rules and orders of the commission regulating the storage and distribution of liquid butane gas, the higher court held, were in conformity with the statute, were legal, and had the force of law.

The court continued:

> One engaging in such business in compliance with said rules is protected in the use of his property and it cannot be declared a nuisance by a court. From this record there can be no serious contention that appellant has failed to comply with the rules of the railroad commission with respect to the location of its tanks, nor can there be any contention that the railroad commission was not acting under express statutory authority when it approved the proposed location of appellant's tanks. Under such circumstances we must conclude that the trial court was without authority to declare the erection of appellant's tanks on the proposed location a nuisance *per se;* this for the reason that the railroad commission, clothed with full authority by the legislature, has approved the proposed location.

Automatic Gas Co. v. Dudding et ux. 189 SW2d 780.

Securities Commission Announces Views on Charges In Lieu of Income Taxes

FOR some time there has been growing up a practice of charging in the current income account, under the heading of income taxes or charges in lieu of income taxes, not only the taxes expected to be paid but also an additional sum equivalent to the reduction in taxes brought about by unusual circumstances in a particular year. Some public utility companies have included such items in operating expenses. The Securities and Exchange Commission has outlined its views on this practice in a release under the Securities Act of 1933, Securities Exchange Act of 1934, and the Holding Company Act, as well as under its accounting series.

The additional charge against income is, in most cases, offset either by a credit to surplus or by utilizing the reduction for some special purpose such as eliminating a portion of unamortized discount on bonds. The amount of the estimated reduction has been colloquially termed a "tax saving" and the general problem is loosely referred to as the "treatment of tax savings." The commission summarized its conclusions as follows:

> 1. The amount shown as provision for taxes should reflect only actual taxes believed to be payable under the applicable tax laws.
>
> 2. It may be appropriate, and under some circumstances such as a cash refunding operation it is ordinarily necessary, to accelerate the amortization of deferred items by charges against income when such items have been treated as deductions for tax purposes.
>
> 3. The use of the caption "Charges or provisions in lieu of taxes" is not acceptable.
>
> 4. If it is determined, in view of the tax

effect now attributable to certain transactions, to accelerate the amortization of deferred charges or to write off losses by means of charges to the income account, the charge made should be so captioned as to indicate clearly the expenses or losses being written off.

5. The location within the income statement of any such special charge should depend on the nature of the item being written off. In the case of a public utility, for example, a special amortization of bond discount and expense should not be shown as an operating expense but should be classified as a special item along with other interest and debt service charges in the "other deductions" section.

6. It is appropriate to call attention to the existence of the special charge by the use of appropriate explanatory language in connection with intermediate balances and totals.

7. In the preparation of statements reflecting estimates of future earnings, it is ordinarily permissible to reflect as income taxes the amount which it is expected will be payable if such earnings are realized, provided, of course, the assumptions as to the tax rates are disclosed.

8. In the preparation of statements which are designed to "give effect" to specified transactions, the provision for taxes may, depending on all the facts and circumstances, properly represent either (a) the actual taxes paid during the period adjusted to give effect to the specified transactions, or, (b) an estimate of the taxes that it is expected will be payable should the income of future years be equal in amount to the adjusted income shown in the statement. The statement should, of course, clearly show what the provision for taxes purports to represent.

The reasons for these views were developed by using the facts relating to a registration statement recently filed by the Virginia Electric & Power Company under the Securities Act of 1933. The commission discussed the facts and accounting principles involved in that case.

Among other matters pertaining to public utility companies, the commission discussed the deductibility of income taxes in computing return. Decisions of the Supreme Court and other courts, as well as commission views reported in *Public Utilities Reports*, were cited in support of the commission's opinion that actual figures should be given regardless of unusual or nonrecurring items. *Re Charges in Lieu of Taxes* (*Holding Company Release No. 6200*).

Subscriber Denied Service from Toll Cable Where Other Service Available

THE Wisconsin commission upheld the refusal by the Wisconsin Telephone Company to extend its Madison exchange service to a farm located between Madison and Sun Prairie, Wisconsin, where the applicant was receiving service from the Sun Prairie exchange of the Commonwealth Telephone Company. The record, said the commission, was not sufficient to show that the undertaking of service of Wisconsin Telephone Company included the service requested.

The applicant's residence was located on a highway which was the route of the Madison-Milwaukee toll cable of the Wisconsin Telephone Company, but the nearest subscriber served by Wisconsin Telephone on this highway through the cable was located 820 feet southwest of the premises, towards Madison. The present service of the Commonwealth Company was furnished from a pole line extending along a town road in the rear of the premises. The premises were approximately 7.5 miles air line from Madison and 3.8 miles air line from Sun Prairie.

The subscriber testified that he had occupied his farm since October 15, 1944. Most of his business connections were in Madison, although his children attended school in Sun Prairie. His mail service was out of Sun Prairie.

Commissioner Bryan concurred in the result but expressed the opinion that the action should be grounded upon a different finding. Whether the Wisconsin Company should be required to extend service, in his opinion, depended upon

whether the testimony and evidence warranted a finding that service at the location was inadequate or could not be obtained. Since the present service could be obtained, the sole question remaining was whether that service was inadequate. He was persuaded that the service was not inadequate.

He believed it unwise and unnecessary for the commission to attempt to determine the scope of the undertaking of a telephone utility in a town in which the utility is lawfully engaged in rendering local service. He continued with the following statement:

> I recognize no limit to such an undertaking within the boundaries of such a town where reasonably adequate service to the general exchange area requires, or may in the future require, that the utility's service be rendered therein. Section 196.50(2), Statutes, places no territorial limit on voluntary extensions within the borders of the town, and the duty to serve must be coextensive with the privilege enjoyed.

Porter v. Wisconsin Telephone Co. (2-U-2077).

Holding Companies Prohibited from Electing Directors Of Subsidiary

ILLINOIS POWER COMPANY, a subsidiary operating company which was prosecuting claims against its direct holding companies, Illinois Traction Company and North American Light & Power, for alleged past spoliation and mismanagement (in a simplification proceeding under § 11 of the Holding Company Act) successfully applied to the Securities and Exchange Commission for an order prohibiting its holding companies from exercising their voting rights to elect a minority of its board of directors. The commission predicated its prohibition order upon the finding that the election might prejudice full and effective disposition of the claims or full and effective competition between the subsidiary and neighboring utilities.

The holding companies had moved to dismiss the petition on the ground that, among other things, the commission had no power to grant the relief sought and that objections to the candidates involved were frivolous. The commission held that it did have the power to prohibit the election by reason of § 12(f) of the Holding Company Act. Election of directors was held to be a transaction or step in contravention of an order designed to prevent circumvention of the act, and thus constituted sufficient basis for the commission power to act.

The proposed directors were either directors of or affiliated with directors of Middle West, a holding company whose subsidiary was operating in areas adjoining, and in some cases completely surrounding, those of the petitioner. The Middle West system also furnished power to the petitioner. Upon the possibility that the Middle West system might seek to acquire the properties, or a controlling interest in the common stock, of the petitioner for integration with its operating company, was constructed the theory that it would be to the Middle West's advantage to have the petitioner's spoliation and mismanagement claims defeated. If the petitioner should come out of the proceedings with a substantial increase in assets by virtue of recovery or settlement of the claims, it would be more expensive to Middle West to acquire control, and, if the subsidiary's current holdings should be canceled, Middle West would be remitted to gathering control from small scattered holdings.

The petitioner also alleged that its rates were lower than those of the Middle West operating company and that the latter company had protested against petitioner's program of reducing rates. So, it felt that the presence of directors beholden to Middle West might prejudice continued rate reduction.

The commission found that there was

actual and potential competition between petitioner and Middle West's subsidiary operating company; that their interests were adverse in important respects and might become even more so; and that the existence of interlocking directors would be against the public interest and the interest of both petitioner and Middle West's operating subsidiary.

Concerning the significance of the claims of the subsidiary against its holding company, the commission said:

> Pursuant to § 11 of the act the North American system must be reorganized, and Traction and Light & Power must be dissolved, on a fair basis. Our jurisdiction to hear the claims asserted by Illinois Power and the "claim-over" rests largely on the necessity of a full record of the facts giving rise to these claims in determining what plans are fair and what the assets and liabilities of the various companies are. Those determinations cannot be reached unless the record is independently made, by parties free of conflicts in interest. A compromise in this case, in order to be of any real value as the basis of a plan, must be reached as a result of completely independent dealing. These aims cannot be achieved without a strict respect for the corporate entities of Illinois Power and its parents, and without rigorous regard for the fact that Illinois Power's parents are not merely stockholders but adverse quasi-parties in a proceeding which pits their interests against those of public security holders in Illinois Power and Light & Power.
>
> We do not see how the directors and management of Illinois Power can engage in a frank discussion of its plans for prosecuting claims and developing evidence or for trading out a compromise if one becomes possible in the presence of directors chosen by Light & Power and North American. Nor do we believe that directors so chosen can isolate themselves from knowledge of what goes on within the Illinois Power board and management, or fail to be a source of embarrassment and suspicion to the Illinois Power representatives, or that they can act with complete loyalty to both Illinois Power and the North American interests. North American and Light & Power should stay on their own side of this controversy—if a compromise is ever reached and presented to us we wish to approach it with the knowledge that it was bargained out at arm's length.
>
> We think it clear that Illinois Power has shown the need to prevent the election of any representatives of its parents to its board while the claims are pending especially at this point where the proceedings are reaching the stage of imminent disposition.

The management of petitioner, in that company's claims against its parent, was held to be acting as a representative of the company's public security holders. Therefore, the commission ruled, it could not settle the litigation on its own behalf, ignoring the rights of others; that it should not be allowed to conduct the litigation or bind the class in the litigation if the court deemed it not to be an adequate representative of the class or to have interests in conflict with those of the class. *Re North American Light & Power Co. et al. (File Nos. 59-39, 54-50, 59-10, 54-82, Release No. 6153).*

New Carrier Held to Be More Capable Of Rendering Reliable Service

An order of the Washington Department of Public Service granting a certificate authorizing motor carrier operation, with certain restrictions as to local service, and denying an application by an existing carrier for similar authority was upheld by the Washington Supreme Court. The present carrier admitted that she had not satisfactorily met a requirement of her operating certificate that she render certain connecting service.

A state law provides that the department is without authority to grant a certificate to operate in territory already served unless existing companies would not provide service to the satisfaction of the department. The department in this case did not act under the authority granted it by statute to authorize service in territory already served but based its order on the assumption that the applications were for authority to serve in territory not already served.

The order limited the authority so as to prevent an invasion of territory served

by the present carrier. The court said in part:

> The granting of a certificate authorizing transportation between fixed termini over a specified route does not give to such carrier the exclusive right to carry all passengers who depart from that terminal for other destinations and all passengers seeking entrance to that terminal area. The only right granted is to operate over a fixed route from one terminus to another.

Shelton v. Anacortes-Mount Vernon Stage Co. et al. 162 P2d 450.

Present Carriers Have First Opportunity To Provide Additional Service

AUTHORIZATION of a new motor carrier to serve a Japanese relocation center, without first giving the present carrier an opportunity to provide service, was held by the supreme court of Arizona to be in excess of the authority of the state commission. Reference was made to a statutory provision that when an applicant requests a certificate to operate in territory already served, the commission shall have power to issue a certificate only when the existing carrier will not provide such service as shall be deemed satisfactory by the commission.

The new carrier argued unsuccessfully that it was not possible, practicable, or convenient to haul the large amount of freight by motor carriers from Phoenix, a large part under refrigeration, and to dump the same on the local transfer service operated by the present carrier, and to have the same merchandise reloaded, recooled by other refrigeration service, and hauled by transfer or vicinity service to the camps. It was further argued that the present carrier could not render the necessary service, having no rights to operate between certain points involved.

In the instant case, said the court, no request had been made by the commission to the present carrier to improve his service. *Betts et al. v. Roberts, 162 P2d 423.*

Holding Company Plan for Retirement of Debentures with Premium Approved

THE Securities and Exchange Commission approved an amended plan filed under § 11(e) of the Holding Company Act providing for the retirement of American Power & Light Company's debentures at 110 per cent of principal amount plus accrued interest. The plan was deemed necessary to effectuate compliance with § 11 of the act and fair and equitable to the persons affected.

The plan, as originally filed, provided for retirement of the debentures at 100 per cent of principal amount plus accrued interest, and while the commission expressed its disapproval, it offered the opportunity to amend the plan in accordance with its opinion. The commission had originally held that a plan providing for payment of principal amount of debentures whose retirement was caused by § 11, was unfair and inequitable to the persons affected, where the value of the debentures substantially exceeded such principal amount.

At the outset, the retirement of such debentures was held not to be at the option of the company within the meaning of the applicable indentures, and, therefore, call premiums as such were not payable. This holding was predicated upon the fact that the retirement was required by § 11 of the act. The commission did hold, however, that the debenture holders were entitled to receive the equitable equivalent of their rights measured apart from the impact of § 11, although such

prepayment did not necessarily have to be at the face amount of the debt, regardless of contract rights and the risks involved.

In this connection it was said:

> As a result of the experience gained through consideration of a large number of later cases, we are persuaded that an automatic rule of 100 in all debt retirement cases would produce inequitable results and that it is necessary to inquire into the circumstances of the particular case to determine whether the payment of 100 is fair and equitable. Consequently in these later cases our opinions dealing with compulsory debt retirements under § 11 have emphasized such circumstances, not articulated in the earlier cases, as the interest rate, maturity date, and risk factors incident to the particular security which is to be prepaid as bearing upon the fairness of the proposed discharge of the security.

The commission, having concluded that the fair and equitable standards of § 11(e) required it to consider the treatment of all security holders in the light of their existing status and their present rights, apart from the operation of § 11, deemed it necessary to determine whether American debenture holders were receiving a fair equivalent of their rights. In doing so, it took cognizance of the fact that American held, and had been holding for some time, substantial amounts of cash items and debt securities of its subsidiaries. It also considered the earning power of American assets, including both the debt securities and the common stock of its subsidiary.

The conclusion was reached that the value of the debentures was 110. For this reason the commission stated that it could not approve the retirement of such debentures at 100 but offered the opportunity to amend the plan in accordance with its opinion. As mentioned above the commission did approve the plan accordingly amended. *Re American Power & Light Co. (File Nos. 70-618, 54-100, Release No. 6176).*

Other Important Rulings

THE Federal Power Commission denied applications for leave to take depositions of members of the railroad commission of Texas in a proceeding where the Texas commission had been granted permission to participate in a proceeding under the Natural Gas Act. The commission said that issuance of an order to take the depositions would be inappropriate under the Natural Gas Act, the coöperative agreement between the commission and the National Association of Railroad and Utilities Commissioners, and the commission's rules and regulations, all of which provide for intervention. *Re Reynosa Pipe Line Co. (Docket Nos. G-595, G-596).*

The special term of the supreme court of New York held that the state has power to preserve to the people energy of Niagara Falls by a clearly expressed statute for that purpose, regardless of the right it may have previously created, permitted, or allowed in the waters of the Niagara river. *Niagara Falls Power Co. v. Duryea et al. 57 NY Supp2d 777.*

The Federal Power Commission dismissed a petition of the city of Louisville for an investigation to determine the cost of production and transportation of natural gas sold by Kentucky West Virginia Gas Company to Louisville Gas & Electric Company for resale to ultimate consumers in the city of Louisville, under § 5(a) of the Natural Gas Act, with the statement that the act does not contemplate an investigation of the cost of production and transportation of natural gas which is not transported in interstate commerce, and, therefore, the commission has no jurisdiction to make such investigation. *City of Louisville v. Kentucky West Virginia Gas Co. (Docket No. G-640).*

NOTE.—The cases above referred to, where decided by courts or regulatory commissions, will be published in full or abstracted in *Public Utilities Reports.*

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Points of Special Interest

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Titles and Index

TITLES

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PUBLIC UTILITIES REPORTS

SECURITIES AND EXCHANGE COMMISSION

Re The Commonwealth & Southern Corporation (Delaware)

File Nos. 59-20, 59-8, 54-75, Release No. 6177
November 1, 1945

REARGUMENT *on provision for vote of stockholders contained in plan for recapitalization of holding company; provision for vote of stockholders eliminated. For Commission decision on plan, see (1945) 59 PUR(NS) 65.*

Intercorporate relations, § 19.8 — Holding company simplification — Vote of stockholders.

A provision, in a plan under § 11(e) of the Holding Company Act, 15 USCA § 79k(e), for simplification, for a vote of stockholders prior to application to a Federal court for an order approving and enforcing the plan should be eliminated where there has been substantial delay following Commission approval of the plan, no arrangements for a stockholders' vote have been made, and various interested groups appear unable to agree on such arrangements.

APPEARANCES: George Roberts, of Winthrop, Stimson, Putnam & Roberts, and John C. Weadock, for The Commonwealth & Southern Corporation; Richard Joyce Smith, of Whitman, Ransom, Coulson & Goetz, for The United Corporation; George S. Munson, of Townsend, Elliott & Munson, for Preferred Stockholders Committee; William J. Brantley, Jr., Elizabeth C. Lownsbury, and Alfred J. Snyder, for themselves and other common stockholders; J. K. Newman, Jr., pro se; John W. Christensen, for the Public Utilities Division of the Commission.

By the COMMISSION: On June 30, 1945, we approved a plan of recapitalization under § 11(e) of the Public Utility Holding Company Act of 1935, 15 USCA § 79k(e) ("the Act") filed by The Commonwealth & Southern Corporation ("Commonwealth"), a registered holding company.[1] The plan as approved contained a provision that this Commission should apply to an appropriate Federal district court for an order approving and enforcing the plan pursuant to §§ 11(e) and 18(f) of the Act, 15 USCA §§ 79k(e), 79r(f), provided that the plan first received the affirmative vote of the holders of a majority of each class of stock of Commonwealth at a meeting held for the purpose of voting on the plan.

In our order approving the plan we retained jurisdiction, among other things, to entertain such further proceedings, to make such supplemental findings and to take such further action as we may deem appropriate in connection with the plan and the consummation thereof. After several months in which no action on the plan was taken and no votes were solicited on the plan, we called for a reargument on the provision for a vote contained in the approved plan. Pursuant to our reservation of jurisdiction in the order approving the plan and after appropriate notice issued on October 2, 1945, reargument was had. Representatives of the company and of stockholder groups, and individual stockholders appeared and were heard.

Our staff has urged that the provision for the vote should be eliminated. It asks that we approve an amendment to the plan to eliminate the provision for the vote if Commonwealth should proffer such an amendment or (if the plan is not voluntarily amended) that we modify the plan under § 11(d) so as to eliminate the provision for a vote.[2]

In discussing, in our original opinion of May 31, 1945, the provision contained in the plan for a vote of stockholders and the arguments of various opposing counsel with respect to it, we pointed out that a vote of stockholders as a condition precedent to bringing a plan to a district court for enforcement is not required under the Act[3] and that this has been ju-

[1] On May 31, 1945, we issued our findings and opinion on the plan stating that we would approve it on condition that certain modifications respecting management and voting were made. Re The Commonwealth & Southern Corp. (1945) Holding Company Act Release No. 5825, 59 PUR(NS) 65. After the filing of these amendments we issued our order approving the plan on June 30, 1945. *Ibid.* Holding Company Act Release No. 5895. The plan provides for the substitution of a single class of common stock for Commonwealth in place of its present common and preferred. In 1942, as a result of proceedings under § 11(b)(2) we ordered Commonwealth to recapitalize on a one stock basis. *Ibid.* (1942) 11 SEC 138, 44 PUR (NS) 217. Our order was affirmed in 1943 by the circuit court of appeals for the third circuit. 48 PUR(NS) 72, 134 F2d 747.

[2] Counsel for Commonwealth have argued in favor of retaining the vote provision. However, they have indicated that the board of Commonwealth would determine what action to take after the issuance of our order herein.

Certain representatives of stockholders opposing the plan have attacked the voting provisions of the plan as not in conformity with the voting requirements of Delaware law (Commonwealth is a Delaware corporation). However, they have, at the same time, opposed the position of the staff which urges elimination of the vote. Representatives of certain preferred stockholders have supported the staff's position.

[3] We have on several occasions held that stockholder approval of a § 11 plan need not be provided for. Re Jacksonville Gas Co. (1942) 11 SEC 449, 45 PUR(NS) 65; plan enforced in Re Jacksonville Gas Co. (1942) 45 PUR(NS) 193, 46 F Supp 852; Re The United Light & P. Co. (1943) Holding Company Act Release No. 4215, 49 PUR(NS)

dicially recognized.[4] We nevertheless considered it appropriate to exercise our discretion in favor of the provision in the plan conditioning its effectiveness on the obtaining of an affirmative vote of a majority of the holders of each class of stock. But we emphasized that our decision rested upon our view of what appeared appropriate at that juncture and that we did not mean that we might not later proceed if necessary under § 11(d) to enforce a plan conforming with the statutory standards without stockholder approval.[5] Thus, we made it clear that we did not consider the vote an essential element of the plan or a necessary condition of enforcement and consummation of the plan.

Although it was indicated as early as May 31st (when we issued our findings and opinion) that there would soon be forthcoming a stockholders' meeting and a vote on the plan,[6] no arrangements have as yet been made with respect to the mechanics of the holding of the meeting and the taking of the vote. Representatives of various security holders and representatives of the company have been unable to reach an agreement on any important factor involved in holding the meeting and voting. Exceptions have been filed with us raising issues concerning such matters as the form and solicitation of proxies, the accuracy and fairness of statements contained in solicitation material, the existence and composition of a proxy committee to tabulate and vote the proxies. In fact counsel for common stockholders opposing the plan have challenged the propriety of any voting on the plan prior to determination of proceedings which they have instituted in the circuit court of appeals for the third circuit seeking review of our order approving the plan.[7] These counsel have also contended (as they did earlier in these proceedings when the voting provision was first being considered) that the affirmative vote of a mere majority of each class of Commonwealth's stockholders as provided in the plan could not suffice as a vote approving the plan because the Delaware law requires a two-thirds majority in such cases.

We think it now plainly demonstrated that the provision for a vote is inappropriate and in fact detrimental to the prompt and orderly attainment by Commonwealth of the objectives expressed in the Act. The provision for a vote has been the cause of substantial delay up to now and gives fair promise of opening endless vistas of delay in the future. In our opinion it

8; plan enforced (1943) 51 PUR(NS) 235, 51 F Supp 217; aff'd *sub nom* Otis & Co. v. Securities and Exchange Commission (1945) 323 US 624, 89 L ed —, 57 PUR(NS) 65, 65 S Ct 483; Re Puget Sound Power & Light Co. Holding Company Act Release No. 4255, April 27, 1943.

[4] See The Commonwealth & Southern Corp. v. Securities and Exchange Commission (1943) 48 PUR(NS) 72, 134 F2d 747, 751; Re Securities and Exchange Commission (1943) 52 PUR(NS) 515, 50 F Supp 965.

[5] Re The Commonwealth & Southern Corp. (1945) Holding Company Act Release No. 5825, 59 PUR(NS) 65.

[6] In fact, on June 30th approval of such meeting and vote was formally granted.

[7] These proceedings were dismissed by the circuit court on the ground that review, prior to the conclusion of enforcement proceedings in the United States district court was premature. Lownsbury v. Securities and Exchange Commission (1945) 60 PUR(NS) 246, — F2d —; rehearing denied, October 2, 1945. In his argument to us on the instant issues counsel for the petitioning common stockholders stressed that the mandate of the circuit court has been withheld pending expiration of the time in which a petition for certiorari may be filed with the United States Supreme Court.

would be an abuse of our administrative discretion and in contravention of the Act[8] to permit our approval of the voting provision, granted in the exercise of our discretion in the light of existing circumstances, to continue in effect in view of these circumstances.

In the argument before us counsel for the staff offered a memorandum dated October 18th which he had prepared and which undertook to summarize all filings that had been made with us and conferences that had taken place between the staff and representatives of participating groups up to that time, with respect to the vote on the plan. This was objected to by counsel for the common stockholders referred to above on the ground that the filings with the Commission speak for themselves and the conferences with the staff of the Commission were not part of the record. We gave opposing counsel leave to file an answer to the memorandum and he did so. In such answer he did not point out any incorrect statements in the memorandum. However, we do not base any conclusions herein on any of the recitals in the memorandum and the memorandum is stricken from the record. Although we have noted the specific conflicts existing in this case, our purpose in doing so is to relate them to the standard of the Act calling for expeditious compliance. The delay, and not the cross currents of dispute that have appeared, is the significant fact, and the passage of an excessive period of time since June 30th without the completion of arrangements for a vote is in itself sufficient to lead us to the conclusion that the provision in the plan calling for an affirmative vote of stockholders should be eliminated.

An appropriate order will issue modifying our order of June 30, 1945, so as to condition our approval of the plan under § 11(e) of the Act on its amendment by Commonwealth within fifteen days to eliminate the provision for a vote of stockholders.

ORDER

The Commission having on June 30, 1945, issued an order approving an amended plan of recapitalization filed by The Commonwealth & Southern Corporation, a registered holding company, pursuant to § 11(e) of the Public Utility Holding Company Act, which plan contained a provision that the Commission should apply to an appropriate Federal district court for an order approving and enforcing the plan pursuant to §§ 11(e) and 18(f) of said Act provided that the plan shall first have received the affirmative vote of the holders of a majority of each class of stock of The Commonwealth & Southern Corporation voting at a meeting held for the purpose of voting on the plan;

The Commission having in its order of June 30, 1945, retained jurisdiction, among other things, to entertain such further proceedings, to make such supplemental findings, and to take such further action as the Commission may deem appropriate in connection with the plan, the transactions incident thereto, and the consummation thereof;

The Commission having pursuant to such retention of jurisdiction and

[8] Section 11(b) expressly directs that "It shall be the duty of the Commission as soon as practicable after January 1, 1938," to procure compliance with its provisions.

after due notice issued on October 2, 1945, heard reargument on the question whether or not the Commission should modify its order of June 30, 1945, respecting said provision for a vote;

The Commission being duly advised and having this day issued its findings and opinion herein; on the basis of said findings and opinion;

It is *ordered* that the order of the Commission of June 30, 1945, be amended so as to provide that the plan of recapitalization of The Commonwealth & Southern Corporation as amended June 14, 1945, be and it is hereby approved pursuant to § 11(e) of the Act, on condition however that said plan be amended by The Commonwealth & Southern Corporation within fifteen days of the date hereof so as to eliminate the said provision that a vote of stockholders be held on the said plan; the said order of June 30, 1945, to be, in all other respects, unchanged and unmodified.

ARIZONA CORPORATION COMMISSION

Re Arizona Edison Company, Incorporated

Docket No. 9751-E-993, Decision No. 15860
October 15, 1945

COMPLAINT *and petition of public utility company against another company alleged to be competing unlawfully; division of territory made by Commission.*

Procedure, § 24 — Notice.

1. Any question as to jurisdiction of the Commission, for want of adequate notice and service of a complaint, is obviated when the respondent stipulates a date for hearing and writes to the Commission concerning matters involved in the controversy, p. 7.

Monopoly and competition, § 16 — Jurisdiction of Commission — Division of territory.

2. The Commission has authority to apportion territory between two public utilities by virtue of the provisions of § 69-235, Arizona Code Annotated 1939, and by virtue of its general constitutional and statutory authority and jurisdiction, p. 9.

Monopoly and competition, § 28 — Division of territory.

3. The public good, convenience, and welfare require that there be a division of territory between two utilities and that a line of cleavage be definitely and clearly drawn, so that further conflict and competition may be avoided and that each utility may serve efficiently and economically in its area, where there is a conflict between a company operating in a city where it has a franchise and another company operating in adjoining rural territory, p. 10.

Monopoly and competition, § 99 — Division of territory — Compensation.

4. Adequate provision can and must be made for fair compensation for any losses suffered by either company where the Commission divides territory between two utilities, with the result that one of the companies must withdraw from a part of the territory, p. 10.

Monopoly and competition, § 28 — Division of territory — Franchise as a factor.

5. The action of the voters of a city in rejecting an application for permission to occupy city streets, where another company holds and operates under such a franchise, is a factor for consideration in making a division of territory between them, p. 11.

Certificates of convenience and necessity, § 83 — Necessity of local consent.

6. A franchise to operate in a city is a prerequisite to the right of a utility to receive the Commission sanction to occupy the territory, p. 11.

Monopoly and competition, § 99 — Division of territory — Compensation.

7. A company operating in a city where it has a franchise and is permitted to continue such operation, while another company is required to withdraw from the city, must pay proper compensation to the other company for its physical properties within the area, together with the reasonable value of the return to said company of such services, p. 11.

Monopoly and competition, § 32 — Invasion of territory — Line construction by customer.

8. A public utility, operating outside of a city, and a user of service in the city, where another utility operates under legal authority, may not evade the law through the device of the construction of a line by the user to the outside system of the competing utility, p. 12.

APPEARANCES: Maurice Barth, Assistant Attorney General; G. V. Hayes, Attorney, for the Corporation Commission; Mark Wilmer and Frank L. Snell, Phoenix, Campbell & Rolle, Yuma, for the petitioner; Cavett Robert, Phoenix, Henry W. Coil, Riverside, California, and Wm. H. Westover, Yuma, Arizona, for the respondent; John B. Wisely, Jr., Yuma, for the city of Yuma; Ralph Brandt, Yuma, for Alfred T. Morgan.

WRIGHT, Chairman: This proceeding was formally begun by the filing with the Commission of a complaint by the Arizona Edison Company, Inc., a public service corporation organized under the laws of Arizona, against the California Electric Power Company, a public service corporation organized under the laws of the state of Delaware, in which the complainant alleged:

(a) That the Arizona Edison Company, Inc., and its predecessors in interest, then was, and had been engaged as a public utility in the sale and distribution of electric energy in Yuma and vicinity since 1892.

(b) That as such utility in operation prior to the enactment of what is now § 69–235, Arizona Code Annotated 1939, it had extended its lines and system in the city of Yuma and to the adjoining county areas as the city developed and grew.

(c) That the California Electric Power Company is a foreign corporation engaged in business in Arizona as a public service corporation in vio-

lation of Chap 90, Laws of 1912, now § 69–262, Arizona Code Annotated 1939, and that in such business it has extended its lines and system so as to interfere with or so as to be about to interfere with the lines and system of Arizona Edison Company, Inc.

(d) That the California Electric Power Company, in violation of Decision No. 15008, Docket 8882–E–909 (1944) 55 PUR(NS) 247 had extended its lines in direct competition with existing service of Arizona Edison Company, Inc.

It prayed:

(1) That the California Electric Power Company be found in contempt of the Commission for violation of its orders and for engaging in the public utility business, as a foreign corporation, without lawful right so to do;

(2) That the attorney general of the state be directed to take appropriate action to exclude the California Electric Power Company from the state as a foreign corporation not lawfully entitled to do business in the state;

(3) That this Commission by appropriate order fix the territorial rights of each utility if it should determine that the California Power Company was entitled to carry on a public service corporation business in the state.

[1] After the filing of the complaint the two companies appeared by their attorneys and stipulated to a date for hearing the matter, which date was later changed by stipulation of the same counsel. The California Electric Power Company also wrote a letter to the Commission directed to this docket number which recited several matters wherein it was stated Arizona Edison Company, Inc., had violated the previous decision of the Commission, stating the California Company desired those matters be also considered and examined into by the Commission on the hearing of the complaint of Arizona Edison Company, Inc.

We think this obviates any question as to notice and the jurisdiction of the Commission, as hereafter referred to, although under our statutes actual notice and an opportunity to be heard is all that is required.

The matter came on for hearing at Yuma, Arizona, on May 10, 1945, and at that time California Electric Power Company for the first time raised objections to the jurisdiction of the Commission for want of adequate notice and service, and for insufficiency of the complaint. These objections were overruled and the matter thereupon heard and stenographically reported. At the conclusion of the hearing the matter was ordered submitted and taken under advisement.

There are three things to be determined as we see it:

First, should the Commission set the territorial limits and boundaries of each of these utilities and does it have the jurisdiction and authority to do so?

Second, has either utility violated the previous order of the Commission and, if so, what penalty should be imposed?

Third, is California Electric Power Company unlawfully carrying on a public service corporation business in this state?

We will proceed to examine and determine these matters in that order.

The Arizona Edison Company, Inc., distributes domestic water and gas, in addition to its electric utility business. Its main distribution system and lines have been and are in the metropolitan area of Yuma while the main distribution system of the California Electric Power Company has been and is generally in the agricultural areas surrounding Yuma. Indeed, it was the declared purpose of this utility in seeking a certificate to serve the developing agricultural areas and settlements with electric power. The Edison Company is hemmed in by the California state line to the north and west, and by the services of the California Electric Power Company on the south and east. The California Company, on the other hand, is not hemmed in in any particular and the extension of its lines to the south and east is limited only by economic considerations.

On the hearing a large number of representative citizens of Yuma appeared and testified to various reasons why they believed the Arizona Edison Company, Inc., should be given the right to serve the metropolitan area of Yuma as it now exists and as it is expected to develop.

Likewise a number of witnesses appeared on behalf of the California Electric Power Company, most of whom however were from the agricultural areas of Yuma county. It also appeared that a franchise election was held in the city of Yuma on April 10, 1945. At this election two questions were submitted to the voters. The first was whether California Electric Power Company should be given a franchise to occupy the streets and alleys of the city in carrying on an electric utility business and the second question was whether the Arizona Edison Company, Inc. should receive that privilege. At this election the voters rejected the franchise application of the California Electric Power Company by a vote of —— to —— and approved the application of Arizona Edison Company, Inc., for such a franchise by a vote of —— to ——. In due order the votes cast were tallied and canvassed and an ordinance adopted by the city council granting a franchise to Arizona Edison Company, Inc. The city attorney of the city of Yuma appeared on the hearing, pursuant to express direction of the city council, to request that the Commission give effect to the expressed will of the electorate of the city of Yuma, and that the entire city be served by Arizona Edison Company, Inc.

The president of Arizona Edison Company, Inc., testified to the willingness of that company to go forward with those who believe Yuma is destined to grow and to commit the company to the extension of water and gas service into the area in which it is expected this growth will occur. It appears from the testimony of the citizens of Yuma that this company has been active as a civic leader, is progressive and confident of the future of Yuma. The position of the California Company on the trial and in its briefs was one of doubt as to the future of Yuma; of pessimism as to whether any substantial growth was to be expected.

According to the uniform course of the testimony the future growth of Yuma may be confidently expected to take place on the mesa south of Yuma

and along and adjacent to First street as it extends westerly from the city limits.

[2] The Commission is of the opinion that it has the authority to apportion the territory involved between the two utilities by virtue of the provisions of § 69–235, Arizona Code Annotated 1939, and by virtue of its general Constitution and statutory authority and jurisdiction. Article 15, Arizona Constitution, §§ 3 and 4, §§ 69–227, 69–222, 69–221, 69–217, and 69–202.

Indeed, our general statutes are far broader than those of the state of New Jersey and, in addition, the statutes of that state contain no express provision authorizing a division of territory. Yet in the case of Eastern New Jersey Power Co. v. Public Utility Comrs. 6 NJ Mis R 118, PUR1928C 13, 17, 140 Atl 258, the court said:

". . . The two contesting companies are public utilities, and, therefore, their method of conducting, managing, and operating their business, in which they are respectively engaged are under the control of and within the jurisdiction of the board to regulate.

"The service to be rendered by each of the companies is to be adequate service for the best interest of the public. Whether or not this service is adequately performed for the benefit of the public, by competing lighting companies, is a question preëminently for the Board to determine. The Board has full power, when the circumstances require it, to direct the manner in which the service owing to the public from each utility company is to be performed. While the streets of the borough may be incidentally affected by the erection of poles, stringing of wires, or otherwise, in furnishing electric lighting, the creation of such a condition does not seem to us to be in conflict with any right of the borough in the control of its highways.

"By Chap 146, p 226, P.L. 1926, amending P.L. 1911, p. 376, § 15, it is inter alia, provided: 'The Board shall have general supervision and regulation of, jurisdiction, and control over, all public utilities and also over their property, property rights, equipment, facilities, and franchises so far as may be necessary for the purpose of carrying out the provisions of this act.'

"And by Chap 150, Laws of 1926, P.L., amending P.L. 1911, p. 379, § 17, subd. (b), the Board is invested with the power to require every public utility to furnish safe, adequate, and proper service, and to keep and maintain its property and equipment in such condition as to enable it to do so.

"Subdivision (c) provides:

'To establish, construct, maintain, and operate any reasonable extension of its existing facilities, where, in the judgment of said Board such extension is reasonable . . . and will furnish sufficient business to justify the construction and maintenance of the same, and when the financial condition of the said public utility reasonably warrants the original expenditure required in making and operating such extension.'

"It seems to us, therefore, that the Board, in making the order in question here, was acting fully within the powers conferred upon it by the law making power of this state. The Eastern New Jersey Power Company assails the validity of the order on the ground that it deprives the company

of its property without due process of law and just compensation. We find no merit in this contention. We can glean no such import from the plain language of the order."

Certainly it is but reasonable to presume that it was the intention of the framers of our Constitution and of our law makers to give this Commission sufficient authority to regulate utilities in the public interest, including the authority to draw such line between competing utilities as would be in the public interest rather than the selfish advantage of either utility.

[3, 4] We are not unmindful of the gravity of the problem from the standpoint of all concerned. Yuma is vitally interested in the problem. Arizona Edison is vitally interested for with its "back to the wall" of the Colorado river and the state of California any line we draw to the south and east of Yuma may mark a last frontier for it beyond which it may not expand. California Electric Power Company is vitally interested for it has some scattered services in some of the areas in question and naturally hopes to profit by any further development in those areas.

Unquestionably the time has now come when the public good, convenience, and welfare requires that there be a division of territory between these two utilities and, as we see it, the line of cleavage must be definitely and clearly drawn so that further conflict and competition may be avoided and so that each utility may serve as efficiently and economically as possible the area within which it is to be responsible for the public comfort and convenience. We recognize that this may require some rearranging of lines and services but we are of the fixed and firm opinion that the public good will be best served thereby in the long run. And, of course, adequate provision can and must be made for fair compensation for any losses suffered by either company. Unless this is done a definite line cannot be clearly fixed leaving reasonable room for a fair share of the expected growth of the area to Arizona Edison. Any division which does not achieve this result can only hurt Yuma and the area.

The Commission is of the opinion and finds that a just and reasonable dividing line between the two companies may be drawn as follows:

Beginning at a point where the west line of Section 33, Township 16 South, Range 22 East of the San Bernardino Base and Meridian produced, intersects the center line of the Colorado river, the center line of the Colorado river being the boundary line between the states of Arizona and California, thence southerly along the said west line of said Section 33, Township 16 South, Range 22 East, S. B. B. & M. to the intersection with the center line of the West Main canal of the Yuma Irrigation Project; thence northeasterly along the center line of said canal to the intersection with the section line between Sections 19 and 20, Township 8 South, Range 23 West, of the Gila and Salt river base and Meridian; thence south along the section line between said Sections 19 and 20, 29 and 30, Township 8 South, Range 23 West, G. & S. R. B. & M. to the southwest corner of the northwest one quarter of Section 29, Township 8 South, Range 23 West, G. & S. R. B. & M., thence east

along the south line of the said NW¼ Section 29, Township 8 South, Range 23 West, G. & S. R. B. & M. to the intersection with the center line of East Main canal of the Yuma Irrigation Project; thence southerly along the center line of said canal to the intersection with the south line of Section 5, Township 9 South, Range 23 West, G. & S. R. B. & M.; thence easterly along the common section line between Sections 5 and 8, Sections 4 and 9, Sections 3 and 10, Township 9 South, Range 23 West, G. & S. R. B. & M. to the common ¼ corner of said Sections 3 and 10, Township 9 South, Range 23 West, G. & S. R. B. & M.; thence northerly along the center line of Section 3, Township 9 South, Range 23 West, and continuing northerly along the center line of Section 34, Section 27, and the center line of Section 27 produced all in Township 8 South, Range 23 West, G. & S. R. B. & M. to the intersection with the center line of the Colorado river, the same being the boundary line between the states of Arizona and California; thence northwesterly along the said river center line to the point of beginning.

We further are of the opinion that by allowing Arizona Edison Company, Inc., exclusive rights within the lines so drawn a reasonable field of expansion will be preserved to it and at the same time, if the area does develop as expected, a rich field of expansion is preserved to California Electric Power Company free from encroachment by Arizona Edison Company, Inc.

[5] In making the foregoing determination we have given some consideration to the action of the voters of the city in rejecting the application of the California Electric Power Company for permission to occupy the streets and alleys of the city in carrying on its utility business. This company now has no lawful right to occupy the streets and alleys of the city of Yuma since its county franchise and its franchise along Gila street have expired and the city has refused it a franchise. True, it had a county franchise in the "7th avenue strip" when that area was annexed to the city of Yuma but the one under which it was then occupying the streets expired in 1943 and the company never occupied the streets and alleys under its 1923 franchise by its own statements to this Commission.

[6] The provisions of § 69–235, Ariz Code Anno 1939, requiring every applicant for a certificate of convenience and necessity to demonstrate it has received "the required consent, franchise, or permit of the proper county, city and county, municipal or other public authority," seems to indicate clearly to us that such a franchise is a prerequisite to the right of a utility to receive our sanction to occupy a territory.

[7] We are further of the opinion that proper compensation must be paid by the Arizona Edison Company, Inc., to California Electric Power Company for its physical properties within the area hereby determined as the exclusive territory of Arizona Edison Company, Inc., together with the reasonable value of the return to said company of such services. This figure can, we believe, be reached by negotiation between the companies, with any sum agreed upon subject to approval by this Commission. However, if the

two companies cannot reach an agreement within ninety days from the effective date of this order, then the Commission will hold a hearing and determine such amount, and jurisdiction is reserved to the Commission for that purpose.

We realize that technically perhaps Arizona Edison Company, Inc., should not be required to pay the value of the physical properties of the California Electric Power Company and of its services within the city of Yuma, since the company must now remove most of such properties and services, since it has no franchise, but we believe the public good and welfare will be best served by making certain there be no waste in the abandoning of these services by California Electric Power Company and that it be allowed and paid fair compensation for such services as it has developed in the area. Of course, if it so elects, it may remove its properties involved for the Commission will not require that it sell the properties if it does not desire to do so.

As to the second of the matters to be determined, we are of the opinion that there has been some rivalry between these two utilities and some at least indirect evasions of our previous decision. We do not believe any of them, with one exception, are serious enough in view of the fact further competitive contact will be avoided, to warrant further attention.

[8] There is one exception, the matter of the service to the American Refrigerator Company plant at 4th and Gila streets now owned by the Southwest Ice and Cold Storage Company. We are of the opinion that the evidence shows a clear connection and concert of action between the Southwest Ice and Cold Storage Company and the California Electric Power Company. The letter of the Southwest Ice and Cold Storage Company to the Southern Pacific Company clearly shows this as do all other reasonable inferences from the evidence. We are further of the opinion that a utility and a user of service may not evade the law through the device of the construction of a line by the user to the system of the competing utility. If such could be done, the entire structure of our utility regulation system could be circumvented and broken down. The case of Holston River Electric Co. v. Hydro Electric Corp. (1933) 17 Tenn App 122, 66 SW2d 217, is almost directly in point and plainly holds that the construction of this line was in violation of the law and our former decision and the service of electricity by the California Electric Power Company over that line to the plant at 4th and Gila streets illegal. We so find, however, we are not inclined to impose any penalty at this time in view of the facts and circumstances.

This brings us to the last matter for decision, the question of the right of the California Electric Power Company to do business in the state by reason of the prohibitions contained in § 62–262, Ariz Code Anno 1939.

The matter is one of greatest importance and gravity to the California Electric Power Company. It has, on several occasions, presented matters to this Commission for approval wherein it appeared it was a foreign corporation and such approval has been granted. However, at no time was the question presented herein urged or

brought to the attention of the Commission. In any event no decision of this Commission on such hearings could operate to change or repeal a statute.

In view of the conclusion we have reached, we do not believe a lengthy review of the evidence necessary or advisable. We feel we should not rule on the matter in the present state of the record since the evidence is not clear as to some vital factors. We prefer to withhold any decision pending further investigation of the matter for we are inclined to the view the California Electric Power Company may be within the prohibitions of the statute, but in view of the gravity of the consequence of such a ruling to that company we are unwilling to act until we feel the matter is fully explored and all facts are before us.

It is accordingly the order and decision of the Commission:

That the following is established as the territory within which Arizona Edison Company, Inc., shall render exclusive service, to wit:

Beginning at a point where the west line of Section 33, Township 16 South, Range 22 East of the San Bernardino Base and Meridian produced, intersects the center line of the Colorado river, the center line of the Colorado river being the boundary line between the states of Arizona and California, thence southerly along the said west line of said Section 33, Township 16 South, Range 22 East, S. B. B. & M. to the intersection with the center line of the West Main canal of the Yuma Irrigation Project, thence northeasterly along the center line of said canal to the intersection with the section line between Sections 19 and 20, Township 8 South, Range 23 West of the Gila and Salt river base and Meridian; thence south along the section line between said Sections, 19 and 20, 29, and 30, Township 8 South, Range 23 West, G. & S. R. B. & M. to the southwest corner of the northwest one quarter of Section 29, Township 8 South, Range 23 West, G. & S. R. B. & M., thence east along the south line of the said NW¼ Section 29, Township 8 South, Range 23 West, G. & S. R. B. & M. to the intersection with the center line of East Main canal of the Yuma Irrigation Project; thence southerly along the center line of said canal to the intersection with the south line of Section 5, Township 9 South, Range 23 West, G. & S. R. B. & M., thence easterly along the common section line between Sections 5 and 8, Sections 4 and 9, Sections 3 and 10, Township 9 South, Range 23 West, G. & S. R. B. & M. to the common ¼ corner of said Sections 3 and 10, Township 9 South, Range 23 West, G. & S. R. B. & M.; thence northerly along the center line of Section 3, Township 9 South, Range 23 West and continuing northerly along the center line of Section 34, Section 27, and the center line of Section 27 produced all in Township 8 South, Range 23 West, G. & S. R. B. & M. to the intersection with the center line of the Colorado river, the same being the boundary line between the states of Arizona and California; thence northwesterly along the said river center line to the point of beginning.

And California Electric Power Company is ordered to desist from further serving electrical energy or otherwise acting as a public service

corporation supplying electrical energy therein, within a period of ninety days following the expiration of the period for which this order is stayed, as hereafter provided;

That Arizona Edison Company, Inc., shall not from and after the expiration of a period of ninety days following the expiration of the period for which this order is stayed, as hereinafter provided, serve electrical energy as a public service corporation outside of the area so set over to it for service; provided, however, that if it be hereafter determined that said California Electric Power Company is doing business in this state illegally as a foreign corporation not within the exceptions to § 69–262, Ariz Code Anno 1939, then this restriction and limitation upon further growth and expansion by Arizona Edison Company, Inc., shall thereupon become null and void.

That said Arizona Edison Company, Inc., unless California Electric Power Company shall elect to refuse to sell its physical properties, shall pay to California Electric Power Company the reasonable value of the physical properties of California Electric Power Company which it will have no further use for within said area hereby set over to Arizona Edison Company, Inc., together with the reasonable value of any services lost by virtue of this order to Arizona Edison Company, Inc., such value and amount to be fixed by mutual negotiation and agreement of said two companies, subject to approval by the Commission. In the event said two companies are unable to agree upon the reasonable value to be so paid within sixty days after the expiration of the period for which this order is stayed, they shall so report to this Commission and a hearing will be held for the purpose of fixing such amount and value. In the event Arizona Edison Company, Inc., shall refuse to pay such reasonable sum within thirty days after the same shall be agreed upon, or after it shall be otherwise finally determined, then and in such event California Electric Power Company shall be under no obligation to remove its said services and properties or to desist from further serving its present customers in said area, but it shall make no further extensions and new services therein.

That the service of electrical energy by California Electric Power Company to the plant formerly owned by American Refrigerator Company at 4th and Gila streets in the city of Yuma is in violation of the decision of this Commission and illegal, and said California Electric Power Company is hereby ordered to cease and desist from further service thereto.

That the right of California Electric Power Company as a foreign corporation to carry on a public service corporation business in the state is not adjudicated at this time but is reserved for further investigation and consideration.

The Commission is further of the opinion that because of the importance of the matters decided herein that the time when this order shall become operative as requiring action on the part of either company or as vesting or divesting any rights, privileges, licenses, and permits, should be postponed until all parties affected shall have an opportunity to seek and obtain a final judicial review of this

decision and all of its provisions should any party consider the same unjust or illegal in any particular or particulars, and

It is accordingly *ordered* that this order shall be stayed and not become operative as requiring any action on the part of California Electric Power Company and Arizona Edison Company, Inc., or either of them, or as operating to vest or divest any rights, privileges, licenses, and permits until the expiration of time for appeal therefrom by any interested party entitled to appeal and, further, in the event of such an appeal or appeals, then until such appeal or appeals shall be finally determined.

ILLINOIS SUPREME COURT

Albert A. Sprague et al.

v.

John D. Biggs et al.

No. 28271
— Ill —, 62 NE2d 420
May 23, 1945; rehearing denied September 13, 1945

APPEAL *from decree dismissing complaint for want of equity in action to enjoin enforcement of order denying proposed rate increase; reversed and remanded with directions.*

Injunction, § 14 — Against Commission rate order — Denial of temporary rate increase.

1. The denial of a temporary increase of intercompany transit company passenger rates furnishes a basis for equitable jurisdiction in an action to enjoin the denial as being confiscatory, and the failure to have a final order relating to the permanent increase of the intercompany fares does not preclude such jurisdiction, p. 19.

Injunction, § 14 — Against Commission rate order — Irreparable damages.

2. A court of equity will take jurisdiction to prevent a public utility company from suffering irreparable loss and injury, where the procedure to be followed under the Public Utilities Act in rate cases does not furnish the utility full and adequate means to prevent the action of the Commission, in reference to rates, from violating constitutional rights, the equity action being a trial de novo and independent of the proceeding pending before the Commission, p. 20.

Injunction, § 52 — Against Commission rate order — Necessary evidence.

3. In an action to enjoin enforcement of a Commission rate order, it is not neecssary that the evidence which was introduced before the Commission be placed in evidence in the equity suit, where the allegations of the complaint, when considered together, state a cause of action, the grava-

men of which is that the enforcement of the order will result in confiscation of the complainant's property, p. 20.

Injunction, § 3 — Against Commission rate order — Effect of franchise termination.

4. Expiration of a transit company's franchises does not preclude the trustees of such company from seeking to enjoin enforcement of an allegedly confiscatory rate order where rate proceedings before the Commission were held on the assumption that the property held by the trustees would continue to render service as a utility and that the city would continue to permit the use of part of its streets, and where the Commission order was based on the premise that the utility would continue to furnish service, p. 22.

Valuation, § 395 — Expiration of franchise — Effect on value.

5. Expiration of a transit company's franchise does not render the company's property located in city streets valueless, except for scrap, for the purpose of determining the value of the company's property for rate-making purposes, p. 22.

Expenses, § 17 — Reasonableness — Materiality of evidence — Failure to maintain proper reserve.

6. Commission findings, as contained in various rate orders, that the present financial plight of a transit company is caused in part by the failure of the management in the past to create and maintain proper reserves for replacements and repairs, that there has been improper payment of dividends with money that should have been used to pay taxes, and that financial affairs have otherwise been mismanaged, are not material to an inquiry as to whether the operating expense of the company exceeds its operating income for the purpose of determining the confiscatory nature of the denial of a proposed rate increase, p. 29.

Return, § 16 — Right to earn return.

7. A public utility company whose properties are devoted to a public use is entitled to reasonable compensation for such use, p. 29.

Injunction, § 28 — Relief from confiscatory rates — Irreparable damage.

8. Public utility rates which do not produce income sufficient to meet operating expenses are confiscatory and present a case where a court of equity will act to prevent continued irreparable loss, p. 29.

APPEARANCES: Herbert M. Johnson and Bell, Boyd & Marshall, all of Chicago (Thomas L. Marshall and David A. Watts, both of Chicago, of counsel), for appellants; George F. Barrett, Attorney General (William C. Wines and Stephen M. Fleming, both of Chicago, of counsel), for appellees John D. Biggs and others; Barnet Hodes, Corporation Counsel, of Chicago (James J. Danaher and William H. Sexton, both of Chicago, of counsel), for appellee city of Chicago; Richard H. Field, David F. Cavers, Harry R. Booth, Robert S. Keebler, and Herbert Sharfman, all of Washington, D. C. (Alex Elson, of Chicago, of counsel), for appellees Fred M. Vinson and others.

MURPHY, J.: This suit was started in the circuit court of Cook county to enjoin the members of the Illinois Commerce Commission and the attor-

ney general from enforcing certain orders entered by the Commission, regulating fares to be charged and collected by the plaintiffs, who are the trustees of the Chicago Rapid Transit Company property. The cause comes direct to this court on constitutional questions from a decree which dismissed the complaint for want of equity.

The Chicago Rapid Transit Company, an Illinois corporation, was organized in 1924 and succeeded to the ownership of the property and assets of four preëxisting railway corporations. It was in effect a consolidation of the property of the four companies, namely: The Northwestern Elevated Railway Company, South Side Elevated Railway Company, Metropolitan West Side Elevated Railway Company, and Chicago and Oak Park Elevated Railway Company. In June, 1932, the Federal district court appointed a receiver for the transit company properties and from that time to January, 1937, it operated as a public utility under a receivership of the said Federal court. On January 27, 1937, proceedings were filed in Federal court under § 77B of an act of the United States relating to bankruptcy, 11 USCA § 207. A trustee was appointed pursuant to said act, and thereafter, on or about March 31, 1941, an additional trustee was appointed. Plaintiffs are acting in such capacity and will be referred to as trustees. During the receivership and later under the reorganization proceedings, the properties have been operated as a public utility subject to regulatory orders and measures imposed upon it by the Illinois Commerce Commission.

Various street railway companies operated surface streetcar systems in the city of Chicago, some of which were in localities serving the same area as the trustees' property. These several lines will be referred to collectively as the "surface lines." A third carrier operating in the city of Chicago and covering parts of the same field as trustees' property was the Chicago Motor Coach Company. It will be referred to as the "motor coach." Since 1935 the transit lines, surface lines and motor coach have been operating subject to the Commission's order which required the issuance of intercompany passenger transfers between the transit company, on the one hand, and the surface lines, or the motor coach, on the other. The orders of the Commission provided for a division of the fares, and, since this action included intercompany fares, the surface lines and motor coach were made parties defendant. They are not opposing the trustees' claims in this action, their only interest being in the percentage they shall receive if and when there is an increase in the intercompany fares. The city of Chicago obtained leave to intervene, filed an answer and resisted the application of the trustees for an increase of fares. A separate brief has been filed in this court on behalf of the city. Some of the contentions made in such brief are common to those made in the brief filed on behalf of the Commission and the attorney general. Unless otherwise noted, the designation of parties as defendants shall be intended to include the Commission, attorney general, and the city of Chicago. One of

the suburbs of the city of Chicago located in the area served by a part of the elevated line intervened but has not appeared or filed a separate brief in this case. The Economic Stabilization Director of the Federal government also intervened and a separate brief has been filed in his behalf.

In July, 1941, the trustees filed a proposed increased schedule of rates with the Commission, which will be referred to as schedule No. 5. Schedule No. 5 referred solely to intracompany fares. The same day that schedule No. 5 was filed, the trustees filed a petition with the Commission asking for an increase of intercompany fares. Schedule No. 5 was docketed under commissioners' cause No. 29923, which was a new number. The petition for an increase of intercompany fares was docketed under Commission docket No. 22981, which was a number of a cause that had been pending for some time and there was involved and still pending under said number the final determination of the division of the intercompany fares between the transit company, surface lines and motor coach. Both matters were set for hearing and, after some evidence had been taken on the intracompany fare petition in No. 29923, the trustees, on November 5, 1941, filed two additional petitions, one under No. 29923, pertaining to intracompany fares and the other under No. 22981, pertaining to intercompany fares. Each petition contained allegations to the effect that the financial condition of the trust estate was such as to need an increase of fares, and in No. 29923 the prayer was that schedule No. 5 be put into immediate effect without the 30-day statutory notice. The petition in No. 22981 asked for immediate increase of intercompany fares. Further evidence was heard in No. 22923 and during the course of the proceedings the parties stipulated that the evidence taken in such cause should be considered as evidence in No. 22981. On February 13, 1942, orders were entered in each of said causes denying the petitions for temporary increase of fares. On February 20th, thereafter, this action was instituted based on the two orders of February 13 denying temporary increase. The taking of evidence was concluded in No. 22923, and on June 15, 1942, an order was entered permanently denying or suspending schedule No. 5. Thereafter the trustees filed the amended and supplemental complaint on which the cause was tried and in which they set forth the matters which occurred subsequent to the filing of the original complaint on February 20th.

The gist of the trustees' action was that the two orders of February 13th, denying a temporary increase of fares, and the order of June 15 permanently suspending schedule No. 5, deprived plaintiffs of their property without due process of law and was in violation of the state and Federal Constitutions. After the pleadings were at issue, the cause was referred to a special master who found in favor of the plaintiffs and recommended a permanent injunction issue enjoining the enforcement of the orders above referred to. Exceptions were sustained to the special master's report and a decree entered dismissing the complaint for want of equity. This appeal followed.

Defendants advance various contentions which are preliminary to the main issues and which would, if sus-

tained, furnish a basis for disposal of the case without a consideration of the real issue presented by the trustees. These several contentions will be given consideration first.

[1] Defendants concede that under the authority of Peoples Gas Light & Coke Co. v. Slattery (1939) 373 Ill 31, 31 PUR(NS) 193, 25 NE2d 482, a public utility has, under certain circumstances, the right to apply to a court of equity for relief against the orders of the commission, but defendants contend this action is not of that character. Defendants contend that plaintiffs did not exhaust their administrative remedies before the Commission as to the intercompany fares and that equity will not take jurisdiction even in a confiscation case until the utility has exhausted the remedies provided for under the Public Utilities Act.

It will be noted, from the statement as to the procedure had before the Commission, that when the amended complaint was filed the Commission had not entered a final order on the trustees' petition asking for an increase of intercompany fares. It is stated in the briefs that a large amount of evidence had been taken in such action but that it had not been concluded. Such proceeding involved matters in which the surface lines and the motor coach were interested. The question then is as to whether it was essential to the maintenance of this action that the matter of an increase of intercompany fares be first finally determined. The issue submitted for consideration by the amended and supplemental complaint is as to whether the facts pleaded, if proved, would show that the two orders of February 13th, denying temporary increase of fares (intracompany and intercompany) and the order of June 15th, denying the increase proposed in schedule No. 5, had the effect of compelling the trustees to continue operation under a schedule of fares that were confiscatory as to the trust property without due process, in violation of the state Constitution and the Fourteenth Amendment of the Federal Constitution. The trustees' application for temporary increase of intracompany fares was accompanied by the specific request that schedule No. 5 be placed in effect at once. The fact that schedule No. 5 was the basis of the proposed increase in the original application would not prevent it from being the basis for a temporary increase. The two applications, that is the one for temporary increase of intracompany fares, and the one for an increase which was of a more permanent character; were separate and distinct matters, and although the evidence introduced in such proceedings was to a certain degree the same, they were, as to purpose and duration, of a different character.

In Peoples Gas Light & Coke Co. v. Slattery, *supra,* 31 PUR(NS) at p. 202, 25 NE2d at p. 490, this court recognized that the denial of a request for temporary increase of a fare might result in the violation of constitutional rights of the utility which would furnish a basis for a court of equity to take jurisdiction. In that case it was said: "The action of the Commission which immediately preceded the filing of the equity suit in this case was its denial to install a temporary rate. Its order in this respect ended its legislative function so far as temporary rates

were concerned. Without temporary rates the company would have to operate many months without an adequate return and with no possibility of getting any compensation if it were eventually successful." The order of February 13th denying the temporary increase of intercompany fares was also a final determination of a legislative function.

The pleading of these two orders, accompanied with other facts, furnished a basis upon which a court of equity would take jurisdiction. It is not necessary at this juncture to determine whether the pleading of the order of June 15, 1942, which denied an increase of intracompany fares, and the failure to plead a final order as to intercompany fares, prevented a court of equity from taking jurisdiction. As pointed out, the orders denying temporary increase as to both intracompany and intercompany fares furnished a basis for equitable jurisdiction, and questions pertaining to the failure to have a final order on the trustees' application for an increase of intercompany fares will be reserved for later consideration.

[2, 3] Defendants earnestly contend that the allegation of the amended and supplemental complaint shows this to be an action to determine whether the evidence before the Commission was sufficient to sustain the orders entered by it. In support of such contention reference is made to certain allegations of the amended complaint. It was alleged that after evidence showing the value of the trust property, cost of operation, revenues produced, and the incurring of certain unanticipated expenses had been introduced before the Commission, the Commission "nevertheless in arbitrary disregard of such evidence and the facts above set forth and the provisions of said utility act, that the rates of fare shall at all times be just and reasonable, the Commission entered orders as of February 13, 1942, denying plaintiffs' petition," etc. And, in another paragraph, it was alleged that "The action of the Commission in entering such orders was arbitrary and capricious, contrary to law, and in total disregard of the evidence."

Defendants emphasize the presence of the words "arbitrary and capricious," "contrary to law," and "in total disregard of the evidence" as submitting a question as to whether the evidence before the Commission supports the findings set forth in the order. The record in this case shows that evidently many of the matters covered by the evidence on the hearing before the Commission were introduced as evidence in this case, but it does not appear that all the evidence taken before the Commission was made a matter of evidence in this case. If the amended complaint be given the construction contended for, then this cause resolves into an attempt to have a court of equity exercise appellate jurisdiction over orders and decisions of the Commission. The right of appeal from the Commission is provided for by § 68. Illinois Rev Stat 1943, Chap 111⅔, Par 72. As pointed out in the Slattery Case, situations may arise in rate cases before the Commission where the procedure to be followed under the Public Utilities Act does not furnish a utility full and adequate means to prevent the actions of the Commission in reference to

rates from violating constitutional rights. Under such circumstances, a court of equity takes jurisdiction to prevent the utility suffering irreparable loss and injury. The equity action is a trial de novo and is independent of the proceeding pending before the Commission. There may be questions of fact which are common to both cases and the decisions to be made may relate to the same subject matter, but on the issues raised and the matter of proof to be followed in the equity case they are to be considered as separate and distinct actions. The opinions in some of the cases indicate that the evidence introduced before the Commission was placed in evidence in the equity suit, but it cannot be said that such procedure is essential in all cases to the maintenance of the equity action.

We believe the principles announced in Prendergast v. New York Teleph. Co. 262 US 43, 67 L ed 853, PUR 1923C 719, 724, 43 S Ct 466, 469, are applicable to this question. It was an action in equity to enjoin the enforcement of two orders of the Public Service Commission and the state of New York, which had temporarily reduced, pending final determination, certain rates to be charged by the company. It was contended that the evidence before the Commission should have been introduced into the equity action. After stating that the pleadings did not raise a question as to the arbitrary action of the Commission, it was said: "The sole issue presented was whether or not the orders were confiscatory; which was to be determined by the court upon the evidence submitted to it. Either party might, of course, show, by competent testimony, any fact brought out before the Commission which might throw light upon this issue; and the defendants cannot now rightly complain that the company did not introduce evidence which they themselves do not appear to have regarded as material."

Counsel for defendants cite many cases, some from Federal jurisdictions, in support of their contention that the failure to introduce the evidence before the Commission is fatal to this proceeding. An examination of those cases discloses that the issues to be determined in many of them were not the same as the issue in this case. For illustration, in Spiller v. Atchison, T. & S. F. R. Co. (1920) 253 US 117, 64 L ed 810, 40 S Ct 466, the action was to recover reparations which had been allowed for excessive charges. The question of confiscation was not involved. The issue in Hudson & M. R. Co. v. Hardy (1939) 103 F2d 327, was as to whether the complaint was subject to the provisions of the Railway Labor Act. The case of Louisiana & Pine Bluff R. Co. v. United States (1921) 257 US 114, 66 L ed 156, 42 S Ct 25, was submitted on a stipulation of facts, which was a controlling factor in the decision.

The allegations, which constitute the general gist of the complaint, that the Commission acted "arbitrary," "capricious," and in "disregard of the evidence" are mere conclusions of the pleader and there was no allegation of fact to support them. We conclude that the allegations of the complaint, when considered together, stated a cause of action, the gravamen of which was that the enforcement of the orders of the Commission would re-

sult in confiscation of trustee's property.

[4, 5] The city of Chicago does not join the other defendants in the following contention. The facts pertinent to it are that, prior to organization of the Rapid Transit Company, each of the four elevated companies had a franchise with the city of Chicago. The Commission's orders of February 13, 1942, contained a general finding that the several franchises contain provisions regulating the fare which was a basic cash fare, a minimum of 5 cents with no through-service fare to the city of Chicago in excess of 10 cents. It was stated that the franchise for the Oak Park-Lake Street Branch expired prior to 1941, that principal portions of the franchise of the Metropolitan West Side Branch expired in April, 1942, and that the remaining franchises expired at variout dates beginning in 1944.

The contention is made that the expiration of a part of the franchises and the early termination of others leaves plaintiff without a standing in this case. It is argued that as to the franchises which have expired the trustees are, as to the property located in the streets under such franchises, "tenants at sufferance." It is intimated that as to such streets the trustees are trespassers. Assuming that the expiration of the leases creates such a relationship, it is argued that the trustees cannot invoke the "constitutional right to make a fair rate of return or even to avoid a loss." We will treat such contention as predicated on the theory that a utility which has no franchise giving it the right to continue to use the streets is not a going concern holding property which may be valued for rate-making purposes, rather than on the theory that equity will not aid a trespasser or wrongdoer.

As indicated, the franchises had not all expired, but for purposes here it will be assumed that all had terminated by their terms. Defendants do not state whose "tenants at sufferance" the trustees might be, but since they refer to the expiration of the franchises granted by the city they must have intended that the term apply to the relationship that existed between the utility and the city. The character of the relationship between the city and the trustees was not made an issue by the pleadings, the special master's findings or exceptions thereto. The city's answer to the trustees' amended complaint makes no reference to the fact that the utility's franchises have expired. A separate brief has been filed in this court on behalf of the city and it contains no reference to the relationship existing between the city and the utility as to the property that stands in the streets.

The foregoing observations answer one phase of the question, but it should be given consideration from a broader aspect. The power to regulate rates of a public utility is fixed in the general assembly and when exercised it is as an act of sovereignty performed in the interest of protecting the lives, health, comfort, and general welfare of the public. Such power has been delegated to the Illinois Commerce Commission, and when the orders that are challenged in this case were entered the Commission was exercising a part of the police power of the state. It was in the interest of the people of the state.

The power which the general as-

sembly confers upon a city to grant franchises to a utility for the use of the streets must be distinguished from the power which the general assembly may delegate to be exercised in the regulation of rates of such utility. It has been held that where a city undertook to fix rates of a public utility operating within its boundaries, such action must give way to a rate fixed by the Commission. State P. U. C. ex rel. Quincy R. Co. v. Quincy, 290 Ill 360, PUR1920B 313, 318, 125 NE 374, 376. In this case it was said: "The municipal authorities in this state have never been clothed with power to fix, by binding contracts, rates for any definite term of years."

In Chicago R. Co. v. Chicago, 292 Ill 190, PUR1921A 77, 83, 84, 126 NE 585, 588, in discussing a question somewhat similar to the one presented here, it was said: "A municipality is a mere agency of the state, and, whether invested with the fee or a mere easement in streets, it holds them in trust for the people of the whole state, and, so far as their use for street purposes is concerned, every citizen of the state has an equal right, and is represented not alone by the city of Chicago but by the general assembly. . . . The general assembly has the power and is charged with the duty to see that rates of fare in the use of streets are reasonable, within the limit, on the one hand, of a fair return to the railway company and reasonable compensation for the service rendered, and the interest of the city cannot affect the exercise of that power and duty."

The proceedings before the Commission in this suit are on the assumption that the property held by the trustees is going to continue to render service as a utility, and that the city will continue to permit the use of parts of its streets. The orders of the Commission are on the basis that the utility will continue to furnish transportation to the public. Under such circumstances, the property of the utility must be considered as devoted to a public utility and during the continuance of such use the trustees have the right to be compensated for the services it renders. We perceive no reason why the trustees operating a public utility under the circumstances shown would not be entitled to invoke the constitutional requirements of due process.

As an alternative to this contention it is urged that even if the expiration of the franchise does not peremptorily disentitle plaintiffs from claiming confiscation, such expiration would render the transit company's property which is located in the streets valueless except for scrap. This contention is directed to the valuation to be placed upon property as a basis for rate-making purposes. This contention is answered by what was said in Denver v. Denver Union Water Co. 246 US 178, 62 L ed 649, PUR1918C 640, 650, 38 S Ct 278, 282. In that case a utility applied to a court of equity to restrain the enforcement of certain city ordinances which fixed the rates the utility might charge. It was alleged that the ordinances confiscated the utility's property and deprived it of due process of law within the meaning of the Fourteenth Amendment to the Federal Constitution. The franchise which gave the utility permission to use the streets had expired before the ordinance in question was adopted.

It was asserted that by reason of the expiration of the franchise the property in the streets had nothing but a "junk" value. It was said: "In this situation, there can be no question of the company's right to adequate compensation for the use of its property employed, and necessarily employed, in the public service; nor can it be doubted that the property must be valued as property in use. It involves a practical contradiction of terms to say that property useful and actually used in a public service is not to be estimated as having the value of property in use, but is to be reckoned with on the basis of its 'junk value.' Nor is the question of value for present purposes greatly affected, if at all, by the fact that there is neither right nor obligation to continue the use perpetually, or for any long period that may be defined in advance. The reason is not obscure: The cost and detriment to a property owner attributable to the use of his property by the public, and the value of the service rendered by the property to the public, are measured day by day, month by month, year by year, and are little influenced by the question how long the service is to continue. The cost of the service includes the use of the plant, but, ordinarily, not its destruction, except through the slow processes of wear and tear and obsolescence, for which graduated depreciation allowances are made. The whole calculation is a matter of income, not capital, accounting; and the cost and value of the use of a given property for a stated period is the same whether the use is to be continued after the expiration of the period or not. If the period is extended, compensation for the use is extended proportionately."

In Iowa City v. Iowa City Light & P. Co. 90 F2d 679, 682, 112 ALR 618, in a somewhat analogous case, it was said: "It is well settled that a public service utility operating under a city franchise is not released from its duty to render service at the moment its franchise runs out. Where the city inhabitants have become dependent upon the service and no other arrangements have been made to supply it, the obligation to serve remains on the utility whose properties still occupy the streets and public places. Neither is the city absolved from its duties by the termination of the franchise. The reciprocal duties which result from necessity when the term of the franchise expires are no less certain because the conditions are of indefinite duration. While they continue, the utility must keep the service up and the city must require the rates to be reasonable. It follows that the utility must continue to use its best effort to render its service efficiently and economically, and a reasonable choice of means remains with the company. If in order to accomplish that end it is necessary for it to lay more pipes in streets in which it has not yet laid them, the temporary nature of its tenure in nowise relieves it of its duty, nor deprives it of its right, to keep up with the requirements of its service." See annotation on this question, 112 ALR at p. 625. 43 Am Jur 622, § 79.

We come to a consideration of the case on its merits. The trustees contend that the Commission's denial of their petitions for temporary increases of intracompany and intercompany

fares and the permanent suspension of schedule 5 leaves in force schedules which reduce the income from property devoted to public use below the costs of operation. They also contend that they are entitled to an increase of fares sufficient to earn a fair return on the trust property devoted to the public use. The schedules remaining in force after the Commission had denied the temporary increase and permanently suspended schedule 5, were substantially the same as had been charged on behalf of the transit system since prior to January 1, 1937.

In reply to the trustees' claim that they are operating at a loss, defendants answer by asserting that a net operating loss "can be ascertained only after subtracting from gross income such deductions as are not properly chargeable to reinvestment of capital, and, in the case of figures such as those representing depreciation, after a correct basis for depreciation has been established and after deferred maintenance has been eliminated." Defendants argue that any increase in fares to a public utility must meet the primary test of the value of the service rendered and that by such measure the service furnished the public by the trustees will not justify an increase of fares. They assert that "under no circumstances is a utility entitled to charge more than its service is really worth and this is true even though the result is loss or even ruin." Defendants make other contentions in reply to the trustees' claim that they are entitled to an increase of fares sufficient to earn a fair return on the trust property but such contentions will be reserved for later consideration. We will now consider the question as to whether the trustees have proved that the income from used and useful property is not sufficient to meet operating expenses.

The Commission found that the increase as proposed by schedule 5 would increase the intracompany fares approximately 23 per cent. The basic cash fare in Chicago was proposed to be increased from 10 cents to 12 cents. Certain classes of fares were discontinued but all that were retained were increased. The petition for temporary increase of intercompany fares was upon substantially the same basis as the increase proposed by schedule 5 as to intracompany fares. The petition asked that the basic intercompany cash fare in the city of Chicago be increased from 10 cents to 12 cents. The percentage of increase for this class of fares as found by the Commission was approximately 20 per cent. The evidence of the trustees shows that if the increases were granted, it would increase their revenue approximately 14 per cent, or slightly more than $1,700,000 per year. From the adoption of the intercompany transfers, the basic 10-cent cash fare in the city of Chicago had been apportioned by order of the Commission, so that the trustees, on the one hand, received 6 cents and the surface line or motor coach, as the case might be, received the remaining 4 cents.

The trustees operate and control approximately 82 miles of railroad line, all of which is available for local passenger transportation in the city of Chicago and ten suburbs, all located in Cook county. A considerable part of the system's mileage was owned by the transit company but a part was

operated by the company under a leasing arrangement with the owners. It was all operated as one system, and the receiver, and now the trustees, have continued the leasing arrangements as to a part and continue to operate it as one system. A small part of the track is constructed at grade, some on an earthen embankment, but the greater part is on an elevated steel structure. A considerable portion of it is double tracks with certain places having three and four main tracks. The entire system is operated with electrical energy. It owns 1,633 passenger cars and operates approximately 5,300 trains every twenty-four hours. The greatest movement of trains is through the main business or loop area of the city of Chicago where at rush hours there are about 160 trains per hour. There are 227 passenger stations located approximately one third of a mile apart, except in the loop district, where they are much closer. It employs regularly about 4,650 employees.

The contention made upon this branch of the case presents questions relating to the trends for the various years from 1937 to the conclusion of the evidence taken before the special master, for the number of passengers carried, the passenger revenue received, the operating expenses and the effect of the war effort upon the several items. In this connection, it should be noted that this suit was started February 20, 1942, and was referred to a special master the following March. A large amount of evidence was taken, which covers 1,000 pages of abstract and over 80 exhibits. The evidence brings the condition of operation down to May 31, 1943. Therefore, in making a statement of the facts in reference to such matters, it will be necessary to cover the period from January 1, 1937, to May 31, 1943. The evidence introduced on behalf of the trustee, as taken from their records and reports, shows that for each of the years 1937-1941 operating expenses exceeded the income in sums ranging from a low in 1941 of $559,878.40, to a maximum in 1939 of $981,879.70.

The evidence introduced on behalf of the trustees shows that passengers carried, passenger revenue received and revenue from other sources for each year were as follows:

	Passengers carried	Passenger revenue received	Income other than fares but from property devoted to public use	Total
1937	150,349,614	$12,342,578.40	$1,284,735.23	$13,627,313.63
1938	144,559,431	11,820,510.25	1,163,482.27	12,983,992.52
1939	145,394,382	11,902,248.21	1,097,399.63	12,999,647.84
1940	149,205,137	12,176,628.50	1,014,369.99	13,190,998.49
1941	153,895,490	12,596,373.32	1,020,834.58	13,617,207.90

The items which are included to make the totals are not questioned.

The items included as operating expenses and the percentage that each bears to the total cost of operation are as follows: (The percentage that the various items bear to the total varies, and therefore the percentages given are of a general average.) Labor 57 per cent, material 7½ per cent, power purchased 14¾ per cent, miscellaneous 7½ per cent, rent of tracks and facilities 5.85 per cent, taxes 9 per cent, depreciation 4.8 per cent, trustees in-

terest .07 per cent. The total operating expenses for the several items for the respective years were as follows:

	Total operating expenses	Net operating loss
1937	$14,403,815.27	$676,615.13
1938	13,970,259.66	869,709.09
1939	14,082,261.50	981,879.70
1940	13,997,824.77	666,057.42
1941	14,357,184.76	559,878.45

The trustees control certain income properties which are not used or useful as a public utility. In reaching the foregoing balances of net operating losses the trustees included the income from the nonoperating property as a part of the gross income. The amounts received varied from $99,886.51 in 1937 to a high in 1941 of $180,098.41. If such income from nonoperating property were eliminated from the gross income the result would be that the balances of net operating losses as shown above would be increased in an amount equal to the nonoperating income that is deducted from the gross income.

The trustees contend that factors entered into the balance of 1942 that were not present in the balances for the preceding years. Such matters are as follows: The trustees entered into a contract with the collective bargaining agent of its employees, effective June 1, 1941, which increased the wages to be paid for the year in the sum of $806,998.96. Such contract was for one year and upon its expiration on May 31, 1942, the trustees refused to contract for a further increase but upon reference to the National War Labor Board, an increase was approved, effective as of June 1, 1942. The latter increase added approximately $927,000 more, thus making a wage increase from June 1, 1941, of approximately $1,700,000 per year. It is further contended that increased prices of commodities and materials had materially affected operating costs and that the trend would indicate that such costs would continue to increase. It was also urged that the net annual operating losses had prevented the trustees from obtaining credit to carry out the orders of the Commission of April, 1937, which were: (1) to install a full automatic block signal system; (2) to replace all wood, and wood and steel reinforced or composite cars with all-steel or metal cars within a period of approximately five years; (3) to repair, paint, rehabilitate, and improve the steel and wrought-iron structures upon which cars and trains were operated, same to be completed within a period of five years, and (4) equip the motorman's cab front windows of all motor and control trailer cars with window wipers.

In 1942 passenger revenue was $13,835,646.92, which was an increase over passenger revenue received in 1940 of $1,659,018.42, and of $1,239,273.60 over 1941. The evidence shows that passenger revenue received for the first six months of 1943 was $7,649,137.20, which was an increase of $1,287,283.47 over the receipts for the corresponding six months of 1942. Income from property devoted to public use exclusive of passenger revenue for 1942 was $1,271,990.01, which was an increase over the 1940–1941 receipts, respectively, in excess of $250,000. The total income from used and useful operating property for 1942 was $15,007,636.94.

In 1942, the operating expenses were $13,222,343.50. Taxes assign-

able to operating property were $1,311,774.20, and rental of leased lines, miscellaneous rents, and interest on trustee obligations totals $662,744.55. The total of the said items was $15,196,862.28, thus exceeding the gross income from used and useful operating property in the sum of $189,225.34. A report introduced as an exhibit on behalf of the trustees shows that they included income from nonoperating property for the year 1942 in the sum of $232,146.25, thus converting the loss of $189,225.34 to a gain of $42,920.91. It does not appear that the trustees included anything for depreciation in the total listed as operating expenses for the year 1942. The trends of operating expenses for the first six months of 1943 are comparable with the like period for 1942.

Defendants' briefs contain general charges that the trustees evidence showing an operating loss is not founded on a proper basis. One statement is that deductions were made for operating expenses which should have been charged to reinvestment of capital. The items claimed to have been wrongfully classified are not pointed out by counsel, and, assuming that the reference was to materials and supplies purchased, it will be observed that the total materials included in the reports in 1937–1941 was about 7½ per cent of the total operating expenses. A similar general charge is made against the item of depreciation. As previously stated, the figures submitted for 1942 did not include any amount for depreciation. The totals shown for the years 1937–1941 did include depreciation, but even though the item of depreciation was rejected, the evidence shows that the operating expenses exceeded the gross income.

The orders of the Commission denying temporary increases in intracompany and intercompany fares contained vague indefinite findings as to some of the items included by the trustees as operating expenses. In one instance, it is stated that the trustees have included an item of $93,000 as an expense which was rental for a leased line. The charge is accompanied with a statement that the trustee rejected a renewal of such lease but that the right of the trustee to take such action was in litigation. There is nothing in the evidence in this case in reference to said matter except the statement contained in the order of the Commission. In another instance, reference is made to the deduction for taxes. This is accompanied by an expression of doubt as to whether it should be rejected in its entirety because it contained improper items. The special master found that the net losses per year from 1938–1941 were in the amounts stated in the schedule of operating losses heretofore set forth. As to the year 1942, the special master found that there was a net gain of $42,920.91, and for the six-months' period of 1943 there was a gain of $219,831. From the figures stated for 1942, it is obvious that the master included the income from nonoperating property to arrive at such result. The 1943 figures appearing in the evidence do not reflect all the operating charges for that period.

From the evidence submitted we find that for 1941 the trustees operated at a loss and that the upward trend of increased revenues for 1942 and the first six months of 1943 were offset

by the upward trend of wages, commodities, and supplies. The conclusions in reference to the annual losses are drawn without making an allowance for depreciation.

[6–8] Next for consideration is defendants' alternative contention that existing schedules of fares permit the trustees to charge all that the "traffc will bear," and, that being true, the trustees are not entitled to an increase "even though the result is loss or even ruin." In support of such contention, defendants refer to the evidence pertaining to the number of passengers carried by the transit company in years in which there was an increase in the rates. For a number of years, the basic cash fare was 5 cents. In 1918, it was changed to 6 cents, and at various times to 1928 this and other fares were advanced. The number of passengers carried in 1918 was 197,444,107, which was a trend upward from 1916. Beginning with 1919, the trend was downward, until 1921, it was 180,629,282. The defendants attribute the decline following the 1918 adoption of a 6-cent fare to the fact that an increase of fares caused customers to adopt other means of transportation such as the automobile and surface lines. Further figures fail to support the theory, for beginning with 1922, when the basic fare was at a higher level, the trend was upward, reaching a peak in 1926, when the number of passenger fares was 228,812,766. Following 1926, the trend was downward until 1933, when the number was 124,855,354. The trend of revenue followed the same course as the trend of the number of passengers carried. In the peak year of 1926, the total revenue was $18,891,998.03, and the low was in 1933, when $11,881,474.20 was received. The trend of number of passengers carried and revenue received, beginning with 1937, to May 31, 1943, is shown by the foregoing charts.

The figures indicating the trend on the number of passengers carried do not fully support defendants' evidence. The fluctuations over a period of years are as easily traceable to economic and other conditions as to increases of fares. The peak of the number of passengers carried was reached in 1926, which was after certain rates had been increased. This peak was during the business boom of the 20's. The low point on number of passengers carried was reached during a depression era, and, when business activities increased, brought on by war conditions, the trend was upward. Undoubtedly, the restricted use of private automobiles during the present world war has contributed to the increase of the number of passengers. It is obvious that increased rates have not been the sole factor which contributed to the fluctuations from year to year.

Defendants refer to the orders of the Commission, finding that the operating equipment was antiquated and incapable of the service to which the public was entitled. It is conceded on behalf of the trustees that there should be installed a complete block signal system, that a large majority of the present coaches should be replaced with steel coaches, that the elevated structure needs repair and paint to protect it against deterioration, but it is argued that the existence of such conditions has not prevented the furnishing of efficient and safe service.

There is no evidence that tends to show that the public service demands the operation of the trains on a faster schedule or the installation of more trains. There is no evidence to show that the trains have not been operated with reasonable care or that travel on the system is not reasonably safe. In fact, the evidence shows, considering the number of trains each day and the schedules maintained, the accident rate is very low.

This is not a case where the necessity of a public service has, by reason of changed conditions, ceased to exist. The need of the public for a means of transportation is present as evidenced by the number of passengers carried by the elevated lines each year. There is no evidence which tends to show that there is another agency standing by capable of carrying the volume of passengers which the elevated lines have accommodated. We have not overlooked the findings of the Commission as contained in various orders, that the present financial plight of the transit company is caused in part by the failure of the management in the past to create and maintain proper reserves for replacements and repairs, that there has been improper payment of dividends with money that should have been used to pay taxes, and other mismanaged financial affairs. They are not material to the inquiry as to whether the operating expense exceeds the operating income. Whatever effect such matters might have upon the fixing of a rate base need not be determined, for that is outside the scope of the present issue.

In Norfolk & W. R. Co. v. Conley, 236 US 605, 59 L ed 745, PUR1915C 293, 299, 35 S Ct 437, 440, it was found that the rate prescribed by legislative act was barely sufficient to pay the costs of operation. In discussing such fact, Justice Hughes, speaking on behalf of the court, said: "It is apparent, from every point of view that this record permits, that the statutory rate at most affords a very narrow margin over the cost of the traffic. It is manifestly not a case where substantial compensation is permitted and where we are asked to enter the domain of the legislative discretion; nor is it one in which it is necessary to determine the value of the property employed in the intrastate business. It is clear that by the reduction in rates the company is forced to carry passengers, if not at or below cost, with merely a nominal reward, considering the volume of the traffic affected. We find no basis whatever upon which the rate can be supported, and it must be concluded, in the light of the principles governing the regulation of rates, that the state exceeded its power in imposing it."

The property managed and controlled by the trustees is devoted to a public use and the trustees on behalf of the trust estate are entitled to reasonable compensation for such use. It requires no argument to demonstrate that a rate of fares which does not produce income sufficient to meet operating expenses is confiscatory. It presents a case where a court of equity will act to prevent continued irreparable loss. The trustees were entitled to a temporary increase of fares sufficient to meet operating expenses.

The contention of the trustees that they are entitled to rates that will yield a reasonable return upon the property invested raises a question as to wheth-

er the trustees have met the burden of proving facts essential to the establishment of a rate base. It is axiomatic that, if the rates in force do not produce sufficient revenue to meet operating expenses, there is nothing returnable as compensation on the investment, but the establishment of a rate base involves the fixing of the value of the property devoted to the public use, an element which is not essential to a balancing of operating income against operating expense.

Have the trustees met the burden of submitting facts from which the valuation of the property may be determined? The trustees alleged the value of the property used and useful in the public service was $96,265,000. When the matter was before the Commission on the petition for temporary increase and the approval of schedule 5, that body fixed the value at $36,000,000. The special master found it to be $80,000,000, and the trustees did not file exception to such finding. The view taken of the case makes it unnecessary to consider the evidence as to original cost, reproduction cost less depreciation, fair value, and other items which are essential to the fixing of a rate base.

The property of this utility is under the jurisdiction of the Federal court and since 1937 there has been pending a reorganization proceeding under § 77B of the Bankruptcy Act. The details of the issues pending in that proceeding are not before us, but it does appear by the Commission's order that the prior preferred stock series A and B, and the common stock of the transit company are carried at $6,500,000, that the company has a funded indebtedness slightly in excess of $58,000,000, which the Commission says has a value of approximately $3,500,000. The case made by these findings and other evidence appearing in the record clearly indicates that the Federal court assumed jurisdiction to preserve the property for the benefit of the parties interested and to administer it in a liquidation or a reorganization of the corporation. Obviously, one of the main issues before the Federal court is the value of that property and any fixing of a rate base in this case would have a vital effect upon that question. It is true the physical property of the utility is the principal item to be valued, but nevertheless, any rate base that would be established in this case would seriously affect that value. In Colorado Interstate Gas Co. v. Federal Power Commission (1945) 324 US 581, 89 L ed —, 58 PUR(NS) 65, 78, 65 S Ct 829, 838, it was said that "when rates of a utility are fixed the value of its property is affected." No inference should be drawn from what has been said that any rate base would be favorable or unfavorable to the parties interested in the property of the utility.

The evidence also shows that the trustees' petition for an increase of intercompany fares is pending before the Commission. It appears to be conceded that the delay in closing that proceeding is caused by the controversy that exists between the trustees, the surface lines and the motor coach as to the division of the fares. There is also evidence that litigation is pending to determine whether the trustees may reject a lease for a part of the line included within the system. It further appears that the surface lines collectively included several corpora-

tions, some of which are in receivership. There are statements in the orders of the Commission indicating that there is controversy between the plaintiffs and some of the receivers of the surface lines as to the amount that is due the trustees.

Enough has been stated to show that the trustees have not presented a case upon which a rate base for returns on investment may be determined.

The points presented in the brief filed on behalf of the Economic Stabilization Director and Price Administrator are, in the main, the same as those presented by the defendants and which have already been considered.

For the reasons assigned, the decree of the circuit court is reversed and cause remanded, with directions to enter a decree in accordance with the views expressed.

Reversed and remanded, with directions.

CALIFORNIA DISTRICT COURT OF APPEAL, FIRST DISTRICT, DIVISION 1

Independent Laundry

v.

California Railroad Commission

Civ. 12870
— Cal App2d —, 161 P2d 827
September 21, 1945

APPEAL *from judgment that plaintiff take nothing of or from defendant Railroad Commission, following order sustaining Commission's demurrer to amended complaint and granting motion for judgment on the pleading; judgment affirmed.*

Courts, § 8 — Jurisdiction of superior court — Declaratory relief.

1. Code Civ. Proc. § 1060, permitting actions for declaratory relief, does not enlarge the jurisdiction of the superior court as to parties and the subject matter, so that if the Commission or the subject matter of an action is not within the jurisdiction of the superior court, that section will not confer such jurisdiction, p. 35.

Appeal and review, § 4 — Constitutional limitations — Jurisdiction of court.

2. A statutory provision that only the state supreme court shall have jurisdiction to review an order of the Commission is a valid limitation upon the jurisdiction of the various courts of the state, p. 36.

Parties, § 13 — Commission — Dispute between landlord and tenant.

3. The Commission is not an essential or necessary party to an action by a landlord for a declaration of rights under a lease containing a provision

which may be affected by a Commission rule, if the declaration of rights develops into issues with which the Commission is not directly concerned, p. 36.

Courts, § 8 — Jurisdiction of superior court — Restraint on Commission — Action between landlord and tenant.

4. An action by a landlord against a tenant, a utility company, and the Commission for declaratory relief, involving a lease provision which may be affected by a Commission rule, is not instituted in the proper tribunal when brought in the superior court, if the plaintiff seeks to restrain the Commission in the performance of its official duties or desires that the order approved by the Commission should be annulled or modified, p. 36.

Parties, § 13 — Commission — Action between landlord and tenant — Provision as to combined billing.

5. The Commission is not a proper or necessary party to an action, in the superior court, by a landlord against a tenant and others for determination of the scope of a contract between landlord and tenant involving the question of charges for electric service submetered to the tenant and involving the effect of a Commission rule relating to submetering, p. 36.

Courts, § 8 — Jurisdiction of superior court — Action involving Commission rule.

6. The superior court may not require the Commission to accept the court's discretion instead of the Commission's discretion in the enforcement of orders, rules, and regulations, notwithstanding statutory provisions providing or intimating that the Commission may, under certain circumstances, take part in court proceedings in which an order or act of the Commission is involved—provisions for enforcement of Commission orders, p. 37.

Statutes, § 25 — Repeal by implication.

7. Repeals by implication are recognized only where there is an irreconcilable conflict between existing statutes, p. 38.

Appeal and review, § 2 — Constitutional amendment — Effect on other provisions.

8. The 1928 amendment to Article VI, § 5, of the state Constitution, outlining the jurisdiction of the superior court, did not repeal any portion of Article XII relating to the duty of regulation by the Commission, p. 38.

Courts, § 8 — Jurisdiction of superior court — Lease provision — Commission rule.

9. An action for declaratory relief, involving a lease contract and a Commission's rule which may be conflicting, does not present a justiciable controversy between the plaintiff and the Commission in which the superior court may determine the validity of a Commission regulation, p. 39.

APPEARANCES: Stanislaus A. Riley, of San Francisco, for appellant: Everett C. McKeage, Roderick B. Cassidy, Wyman C. Knapp, Hal F. Wiggins, and John M. Gregory, all of San Francisco, for respondent Railroad Commission of California.

WARD, J.: Plaintiff brought this action for declaratory relief joining as defendants Craig Carrier, doing business as Pacific Linen Supply Company, Pacific Gas and Electric Company, and the Railroad Commission of the state of California. The appeal is by plaintiff from a judgment that plaintiff take nothing of or from defendant Railroad Commission which

followed an order sustaining said defendant's demurrer to an amended complaint without leave to amend and the granting of its motion for judgment on the pleadings.

The amended complaint set forth that plaintiff had leased to defendant Carrier, for the operation of a laundry and linen supply business 5,124 square feet in a building owned and operated by plaintiff as a laundry. The sixth clause of the lease between the parties provided: "Said lessee is given permission to install an electric meter at his own expense for the purpose of consolidating the current of the Pacific Gas and Electric Co. to be used for the purposes of measuring the current used by said lessee, it being agreed that lessee shall have the full benefit of the savings secured on a consolidated rate for all current used by him." The amended complaint also alleged that the Railroad Commission under the Constitution and laws of the state of California regulates and supervises public utilities in the matter of fixing rates for gas, electricity and water; that the Pacific Gas and Electric Company is a public utility under the jurisdiction of the Commission; that this company has been providing electric current to plaintiff on the premises, and plaintiff in turn has been supplying to defendant Carrier such portion of the current as was required in the operation of the linen supply business. It is further alleged that the defendant gas and electric company, with the approval of the defendant Commission, has had in force and operation a rule and regulation reading as follows:

"Where the company has adequate service facilities to supply separate premises such separate premises, even though owned by the same consumer, will not be supplied with electric energy through the same meter.

"Unless specially agreed upon, the consumer shall not re-sell any of the electric energy received by him from the company to any other person or for any other purpose, or on other premises than specified in his application for service.

"Owners or lessees of apartment houses or other buildings may re-sell electric energy to tenants of such houses or buildings, provided either,

"(a) Such energy is resold at rates identical with the rates of the company that would apply in the event that energy were supplied to the subconsumer directly by the company: or

"(b) The charge to the subconsumer for such energy is absorbed in the rental charge for the premises occupied by him. In the event that such energy is resold otherwise than as provided in this paragraph, the company shall have the right at its option, either to discontinue service to the consumer, or, to furnish electric energy directly to the subconsumer."

Plaintiff further alleges that it charged defendant Carrier for electric current supplied at the rate charged by the company to plaintiff; "that the amount of current consumed and used by defendant Carrier caused an increase in the amount of current received by and charged to plaintiff and under the schedule of rates fixed by the Commission the charge to plaintiff for such increased consumption was substantially less than the charge would have been had it been computed upon the basis of such increase being separately supplied; during the period above mentioned

plaintiff allowed defendant Carrier the benefit of the saving thereby effected." It was also alleged that plaintiff was unaware of the rule and regulation for some period after the execution of the lease, but subsequently notified and demanded of defendant Carrier that he pay the same rates as would be in effect were the energy supplied directly by the utility company to said defendant; that defendant Carrier refused to pay the rates applicable as a subconsumer and has offered to pay the "lease" rates and no more. It is alleged that the company and the Commission insist that payment be made in accordance with the rule. It is then alleged that plaintiff's business, operating for many years and rendering service to approximately thirty drivers, will be disrupted and that plaintiff, the drivers, etc., will be irreparably injured if the defendant gas and electric company exercises its right to enforce the rule by discontinuance of service. It is further alleged: "That in view of the conflict in the demands of defendants, namely, that of defendant Carrier that the provisions of Clause Sixth of the lease apply, and the demands of defendants company and Commission that the provisions of said rule and regulation apply, it is necessary that a declaration of the rights and duties of plaintiff and the defendants under said lease and said rule and regulation be had." Defendant Commission demurred upon the grounds that (1) the "complaint does not state facts sufficient to constitute a cause of action"; (2) "The court has no jurisdiction of this defendant, or the subject of the action," and (3) there is a "misjoinder of parties." This demurrer to the amended complaint was sustained without leave to amend.

The appellant contends that none of the grounds of the demurrer is good. Respondent Commission urges, mainly, lack of jurisdiction of the superior court to hear or determine any action such as this, so far as the Railroad Commission is concerned. Whatever is said by this court on this appeal is to be considered only in relation to the position of the Commission, the lone respondent herein.

Irrespective of the fact "that the Railroad Commission has exclusive original jurisdiction and the supreme court exclusive reviewing jurisdiction," and that no appeal from the order of the Commission was presented to the supreme court, it is appellant's position that the regulation of the Commission must be taken as valid and that it supersedes and renders invalid the provisions of the lease. Appellant contends that the "status of all the parties can be determined only if and when the appellant, its lessee, Carrier, the Railroad Commission and the gas company are before the court in the same proceedings." Appellant argues that if the superior court does not have jurisdiction over the Commission, there is no way of binding the Commission to an order that the superior court may make.

[1] Actions for a declaratory relief, Code Civ. Proc. § 1060, may be brought against sovereign bodies, depending upon the facts of the case, in the absence of a specific expression of legislative intent to the contrary. However, the section does not enlarge the jurisdiction of the superior court as to parties and the subject

matter, so that if the Commission or the subject matter of this action is not within the jurisdiction of the superior court, § 1060 will not confer such jurisdiction. Hoyt v. Board of Civil Service Comrs. (1942) 21 Cal 2d 399, 132 P2d 804; People v. Buellton Develop. Co. (1943) 58 Cal App 2d 178, 136 P2d 793; Imperial Mut. Life Ins. Co. v. Caminetti (1943) 59 CalApp2d 501, 139 P2d 693.

[2] Section 67 of the "Public Utilities Act," Stats 1915, pp 115, 161, amended by Stats of 1933, pp 1157, 1158; 2 Deering's Gen Laws (1943) Act 6386, pp 2464, 2522, provides in part:

"No court of this state (except the supreme court to the extent herein specified) shall have jurisdiction to review, reverse, correct or annul any order or decision of the Commission or to suspend or delay the execution or operation thereof, or to enjoin, restrain or interfere with the Commission in the performance of its official duties; provided, that the writ of mandamus shall lie from the supreme court to the Commission in all proper cases.

"In any proceeding wherein the validity of any order or decision is challenged on the ground that it violates any right of petitioner under the Constitution of the United States, the supreme court shall exercise an independent judgment on the law and the facts, and the findings or conclusions of the Commission material to the determination of the said constitutional question shall not be final." The provision that the supreme court only shall have jurisdiction to review an order of the Commission is a valid limitation upon the jurisdiction of the various courts of this state. Pacific Teleph. & Teleg. Co. v. Eshleman, (1913) 166 Cal 640, 137 Pac 1119, 50 LRA(NS) 652, Ann Cas 1915C 822; Marin Municipal Water Dist. v. North Coast Water Co. (1918) 178 Cal 324, 173 Pac 473.

[3, 4] In the present case appellant seeks to have the superior court declare the Railroad Commission's rights and duties under the lease and "said rule and regulation." If the declaration of rights develops into issues with which the Commission is not directly concerned but which are solely between plaintiff and defendant Carrier, then the Commission is not an essential or necessary party. If plaintiff seeks to restrain the Commission in the performance of its official duties, or desires that the order approved by the Commission should be annulled or modified, the proceeding has not been instituted in the proper tribunal.

[5] The only California case called to our attention wherein an attempt was made to make the Railroad Commission a party to a superior court action involving issues similar in any respect to those in the present appeal is Sexton v. Atchison, T. & S. F. R. R. Co. 173 Cal 760, 763, PUR1917B 786, 789, 161 Pac 748, 749, in which case the court said "that, by reason of said section [§ 67, Public Utilities Act], no court of the state other than the supreme court has any power to review the orders of the Commission, or to control its official action." It has been held in Truck Owners & Shippers v. Superior Court (1924) 194 Cal 146, 228 Pac 19, that the superior court has jurisdiction where the purpose of a suit is to enjoin a

carrier which has not applied to the Commission for a certificate, which certificate would in effect permit competition with the plaintiff who previously had received a certificate of public convenience and necessity to operate trucks for transportation purposes over a designated area. The proper court to determine the right of another company to operate over the same designated route was the superior court in the absence of action by the Commission in assuming jurisdiction over the second trucking company. At p. 153 of 194 Cal., at p. 22 of 228 Pac it was stated "that the superior court has no jurisdiction to compel the Commission to act," and again 194 Cal at p. 156, 228 Pac at p. 23, that: "We entertain no doubt that, when the Commission has assumed and exercised its jurisdiction, the court would conform its orders and process agreeably to the action of the Commission made within its jurisdiction." The prior action taken by the Commission in the Truck Owners' Case consisted in the issuance of one certificate applicable to the holder thereof. In the present case it is the promulgation of a rule and regulation directed to all consumers of electric energy that such power should not be supplied to separate premises where the company has adequate service facilities to supply the additional consumer unless such energy is resold at rates identical with the rates of the company that would apply in the event that energy were supplied to the subconsumer directly. In Oakland v. Key System (1944) 64 CalApp2d 427, 149 P2d 195, this court discussed questions involving the jurisdiction of the Commission and the superior court. The views expressed in the city of Oakland Case are in accord with the views expressed herein. However, here the issue, the scope of a contract between appellant and defendant Carrier, may be determined without the presence of the Commission.

An interpretation of the rule and regulation in accordance with appellant's views might be of advantage in finally determining the dispute alleged in the amended complaint to exist between plaintiff and defendant Carrier. However, so far as the superior court is concerned its jurisdiction in the determination of the validity of a regulation of the Commission has been restricted. Pacific Teleph. & Teleg. Co. v. Eshleman, *supra*; Truck Owners & Shippers v. Superior Court, *supra;* Allen v. Railroad Commission, 179 Cal 68, PUR1919A 398, 175 Pac 466, 8 ALR 249; People v. Hadley, 66 CalApp 370, PUR1924E 820, 226 Pac 836; Wallace Ranch Water Co. v. Foothill Ditch Co. (1935) 5 Cal2d 103, 53 P2d 929; Foothill Ditch Co. v. Wallace Ranch Water Co. (1938) 25 CalApp2d 555, 78 P2d 215.

[6] Appellant points to sections other than § 67, which provide or intimate that the Commission may, under certain circumstances, take part in court proceedings in which an order or act of the Commission is involved. Section 4 provides merely for the appointment of an attorney to represent the Commission in all actions involving an order or act of the Commission. Section 69 provides that actions involving the acts or orders of the Commission shall have preference over certain other civil causes. Section 75 authorizes the

Commission's attorney in the name of the people of the state of California to commence an action by mandamus or injunction in the superior court to stop or prevent a violation of law or of an order, rule, etc., of the Commission. "The statute, instead of conferring upon the Commission the means of directly enforcing such orders, has provided (Public Utilities Act, § 75) for the institution by the Commission of court proceedings, or for the issuance of process by the court to carry out and make effective the orders of the Commission. As was said in Yolo Water & Power Co. v. Superior Court (1919) 43 CalApp 332, 341, 185 Pac 195, 199: 'The purpose and intent in enacting § 75 is obvious. The Public Utility Act invests the Board of Railroad Commissioners with large powers in the control of public utilities, and gives it powers to fine and punish for contempt. But the Commission is not a court and has not complete court machinery. It was seen that cases might arise where punishments for contempt and fine would not accomplish the objects sought, that writs of mandamus and injunction might be needed, and such writs the Commission had no power to issue. It might become necessary for it to avail itself of the equity powers of the courts. Without express authority granted by the legislature to so do, the question of its right to bring suit might be raised in any litigation arising. Anticipating such contingency, express power was conferred upon the Commission to avail itself of court processes and writs, so that its power in this regard might not be questioned.'" Motor Transit Co. v. Railroad Commission, 189 Cal 573, 582, 583, PUR1923A 232, 240, 241, 209 Pac 586, 590; see also, Kern County Land Co. v. Railroad Commission (1934) 2 Cal2d 29, 38 P2d 401. Enforcing its orders through the offices of the superior court under a specific statute authorizing such appearance is entirely different from a forced appearance without statutory authorization. Hoyt v. Board of Civil Service Comrs., *supra*. In brief, the superior court may not require the Commission to accept the court's discretion instead of the Commission's discretion in the enforcement of orders, rules and regulations. Sexton v. Atchison, T. & S. F. R. Co., *supra*.

[7, 8] In appellant's closing brief a new thought is injected which requires mention. Appellant does not argue nor present supporting authority but suggests that Art VI, § 5 was adopted in 1928, some seventeen years after Art XII, § 22 of the state Constitution and that the 1928 amendment is the latest expression of the will of the people upon the subject of jurisdiction. Appellant does not state that the 1928 amendment to Art VI, § 5 repealed Art XII, § 22, but such inference may be drawn from the language used in the closing brief. Repeals by implication are only recognized where there is an irreconcilable conflict between existing statutes. Railroad Commission v. Riley (1923) 192 Cal 54, 218 Pac 415; Penziner v. West American Finance Co. (1937) 10 Cal2d 160, 74 P2d 252; Rexstrew v. Huntington Park (1942) 20 Cal2d 630, 128 P2d 23. On three occasions § 5 of Art VI has been amended. The purport of the original section and the first two amendments was to outline the jurisdiction of the

superior court. Originally and in several amendments the superior court was given original jurisdiction in all cases of equity and all cases of law involving specified issues. In 1928 the section was amended without mention of "equity" or "law." In the original and amended sections, it is made plain that the superior court has jurisdiction in special cases and proceedings not otherwise provided for. The 1928 amendment contains the following: " . . . and of all such special cases and proceedings as are not otherwise provided for." Article XII, § 22, and the following sections, provide the duty of regulation by the Commission upon matters as are herein raised as issues in this case. Such matters are within the realm of "special cases and proceedings," but they are "otherwise provided for." With respect to the purpose of the proposed amendment to § 5, the sponsor, the judicial council, said: "The first paragraph has been reframed in an effort to eliminate, generally, concurrent jurisdiction in the superior and the inferior courts and to correct certain apparent inconsistencies between the provisions of that section and other provisions relative to the jurisdiction of inferior courts." (Appendix to Journals of Senate and Assembly [1927], Ex. C., First Report of the Judicial Council of California, p. 61.) Evidently there was no thought that the 1928 amendment should repeal any portion of Art. XII.

[9] Assuming that the amended complaint for declaratory relief presented an actual present controversy with a protectable interest in plaintiff (Dowd v. Glenn [1942] 54 CalApp2d 748, 129 P2d 964), such as a lease (Anway v. Grand Rapids R. Co. [1920] 211 Mich 592, 179 NW 350, 12 ALR 52, 82), still the controversy must be one subject to action by the court wherein jurisdiction is claimed.

The basis of this action is the lease contract between plaintiff and defendant Carrier. There is no present justiciable controversy between plaintiff and defendant Commission in which the superior court may determine the validity of the regulation. Merkley v. Merkley (1939) 12 Cal2d 543, 86 P2d 89; Gillies v. La Mesa, L. G. & S. Valley Irrig. Dist. (1942) 54 CalApp2d 756, 46 PUR(NS) 249, 129 P2d 941. In brief, the superior court does not have jurisdiction as the facts are set forth in the amended complaint of the Commission or the determination of the validity of the regulation referred to, even though the Commission might intervene. However, the superior court in the action between plaintiff and defendant Carrier may interpret the "regulation" and declare whether it is applicable in view of the existence of clause sixth of the lease. In Henderson v. Oroville-Wyandotte Irrig. Dist. (1929) 207 Cal 215, 219, 277 Pac 487, 488, it was held: "Again, the validity of the order of the Railroad Commission is not in question nor under review. The interpretation of that order at most is the only question before the court. The superior court is a court of general jurisdiction. It derives its powers from Art. 6, § 5, of the Constitution and § 76, subd. 3, of the Code of Civil Procedure. Yolo Water & Power Co. v. Superior Court (1919) 43 CalApp 332, 185 Pac 195. Where a written instrument affects the title

to real property, otherwise subject to the jurisdiction of the superior court, we can conceive of no reason why such an instrument may not be construed and its meaning declared, even though the document is final in its nature and is the result of action by either the legislative, executive, or judicial branch of a state government or of the government of the United States."

The judgment is affirmed.

PETERS, P.J., and KNIGHT, J., concur.

DISTRICT OF COLUMBIA PUBLIC UTILITIES COMMISSION

Re Washington Gas Light Company

P.U.C. No. 3410, Formal Case 345, Order No. 2944
August 29, 1945

PROCEEDING *relating to annual rate determination in accordance with sliding-scale arrangement of gas company; no change in rates found necessary.*

Expenses, § 46 — Contributions.

1. No allowance was made in operating expenses for a contribution by a gas company to the Greater National Capital Committee in the District of Columbia, p. 41.

Return, § 92 — Gas utility — Sliding-scale arrangement.

2. A primary rate of return of 6 per cent, to be applied in conjunction with a sliding-scale arrangement, was held to be fair and reasonable and sufficient to maintain the financial integrity of a gas company, p. 41.

Return, § 5 — Sliding-scale arrangement — Deficiency in return — "Reserve for Contingencies."

3. An amount reported on the books of a gas company in "Reserve for Contingencies" in accordance with a Commission order was used for the purpose of offsetting a rate increase which would have been necessary because of a deficiency in earnings under a sliding-scale arrangement, and no changes in rates were made because the remaining amount available for rate increase was too small to absorb in new rate schedules, p. 42.

By the COMMISSION:

Nature of Proceeding

This proceeding relates to the annual rate determination in accordance with the provisions of the sliding-scale arrangement established by Order No. 1458 under date of December 13, 1935, 11 PUR(NS) 469, and the basic rate of return to be allowed the Washington Gas Light Company (hereinafter referred to as the "Company") on its property used and useful for the convenience of the public, under the provisions of the sliding-scale arrangement. Order No. 2899,

dated March 16, 1945, instituted the investigation of the above-mentioned matters. Notice of hearing was issued on August 9, 1945, and hearing was held on August 20, 1945.

Return Earned

The results of the investigation conducted by the Commission's accounting bureau were presented by the Commission's executive accountant and auditor, V. A. McElfresh, and the results of the Commission's engineering bureau's investigation dealing with the allocation of property were presented by the Commission's chief engineer, F. A. Sager. The results of the Company's study of operations were presented by its comptroller, O. H. Ritenour. In accordance with the terms of the sliding-scale arrangement, the studies of all three witnesses were predicated on the results of operations during the test year ended June 30, 1945.

[1] McElfresh testified that the net amount available for return from the operations of the Company in the District of Columbia during the test year was $1,859,013.11, or a return of 5.6969 per cent on a weighted rate base of $32,631,809.13. The rate base, he testified, was developed in accordance with the provisions of the sliding-scale arrangement and reflected the elimination of $4,066,970.90 covering the estimated cost of property determined by Sager to be devoted to furnishing gas to the subsidiaries of the Company located outside of the District of Columbia. Ritenour testified that the net amount available for return was $1,858,315, or a return of 5.6948 per cent on a rate base of $32,631,877. He explained that the small differences between his figures and the figures presented by McElfresh were due to the inclusion by him in operating revenue deductions of some $600 contributed by the Company to the Greater National Capital Committee, which McElfresh had excluded in line with previous decisions of the Commission on similar payments in the past. No evidence was presented which would justify the Commission reversing its position with respect to this matter.

The Commission finds that the net amount available for return during the test year ended June 30, 1945, is $1,859,013.11; that the weighted rate base for the same period is $32,631,809.13, including $1,330,887.57 for working capital; and that the rate of return earned is 5.6969 per cent.

Rate of Return

[2] As hereinabove stated, the Commission ordered an investigation of the primary rate of return to be allowed to the Company under the sliding-scale arrangement. Order No. 1458 provides a primary rate of 6½ per cent. In Order No. 2827, 56 PUR(NS) 238, the Commission fixed the primary rate of return at 6 per cent for the test years ended June 30, 1943, and 1944.

In the present proceeding McElfresh testified that, in his opinion, a primary rate of return of 6 per cent would provide an adequate return on the common stock equity invested in the rate base, after providing for the annual cost of long-term debt and dividends on preferred stock. He pointed out that the return earned on the common stock equity invested in the rate base during the test year ended June 30, 1945, amounted to 9.519 per cent and that a 6 per cent return on

the rate base would provide something more than 9½ per cent on the common stock equity. In support of his conclusion, he referred to his studies of earnings price ratios and dividend price ratios of the common stock of six operating gas utilities, including the Washington Gas Light Company. Neither his conclusions nor his support therefor were challenged by the Company. He further testified that, in his opinion, a primary rate of return of 6 per cent should remain in effect until further order of this Commission, so that it would not again be necessary to review this question in the immediate future unless changed conditions indicated that such a review is warranted. The Company did not present any evidence on the question of rate of return.

After consideration of the record in this proceeding and other pertinent factors having a bearing thereon, the Commission finds that a primary rate of return of 6 per cent to be applied in conjunction with the sliding-scale arrangement is fair and reasonable and is sufficient to maintain the financial integrity of the Company.

Determination of Amount Available for Increase in Rates

The sliding-scale arrangement presently provides that when the return earned is less than the primary rate of return but is in excess of a rate which is one half of one per cent below the primary rate of return for two consecutive years, the entire deficiency shall be used for an increase in rates. McElfresh recommended that this provision be modified by reducing this spread from one-half of one per cent to one-quarter of one per cent. Ritenour opposed such a modification.

The return earned by the Company during the current test year was $98,895.44 less than a return of 6 per cent on the rate base. If McElfresh's recommendation is adopted only three fourths of this amount, or $74,171.58, will be available for a rate increase. If no change is made in the present provisions of the sliding-scale arrangement, the entire $98,895.44 becomes available for a rate increase. The Commission believes that a change in the provisions of the sliding-scale arrangement dealing with rate adjustments should be deferred until such time as a review of the entire arrangement is made, a matter now being given serious consideration by the Commission.

Conclusions

[3] The Commission finds that the amount available for increase in rates during the rate year, beginning September 1, 1945, is $98,895.44. The Commission further finds that the $87,817.51 now recorded on the books of the Company in "Reserve for Contingencies" in accordance with Section 5 of Order No. 2827 should be used for the purpose of offsetting the rate increase found necessary. This means that there still remains $11,077.93 available for rate increase. The Commission finds that this amount is too small to absorb in new rate schedules, and that it should be carried over for future use; therefore no changes in rates will be necessary for the rate year beginning September 1, 1945.

On August 22, 1945, this Commission by Order No. 2943, removed certain restrictions upon the use of gas

for space heating purposes. The schedules of rates, rules, and conditions of service prescribed in the order herein will give effect to the removal of such restrictions.

An appropriate order will issue.

ARIZONA SUPREME COURT

Corporation Commission et al.

v.

Consolidated Stage Company

No. 4754
— Ariz —, 161 P2d 110
July 14, 1945

APPEAL *from Superior Court judgment setting aside Commission order for transfer of stock in motor carrier corporation; affirmed.*

Corporations, § 17 — Distinct entity — Distinguished from stockholders.

1. A corporation is for most purposes an entity distinct from its individual members or stockholders, and, by the very nature of a corporation, corporate property is vested in the corporation itself and not in the stockholders, p. 44.

Corporations, § 5 — Powers of Commission — Transfer of stock.

2. The Commission has no power to order the transfer of stock of a corporation, operating under a certificate of convenience and necessity, from one party to another, p. 45.

Commissions, § 17 — Jurisdiction — Statutory authority.

3. The Commission has only such jurisdiction and can exercise only such powers as are expressly or by implication conferred upon it by Constitution or statutes, p. 45.

Appeal and review, § 80 — Parties — Corporation affected by order.

4. A corporate motor carrier is vitally and materially affected by a Commission order transferring stock of the corporation and is a party in interest within the meaning of a statute permitting such a party to commence an action to vacate or set aside an order of the Commission, p. 46.

Appeal and review, § 74 — Judgment on the pleadings — Commission order in excess of authority.

5. A motion by a corporate motor carrier for judgment on the pleadings was proper in its action to set aside an order of the Commission for the transfer of corporate stock when the only question before the court was whether the Commission had authority to transfer a share of stock from

one party to another and the answer admitted the making of the order for the transfer, p. 47.

APPEARANCES: Joe Conway, Attorney General, and Thomas J. Croaff, Assistant Attorney General, for appellants; Struckmeyer & Struckmeyer and Claude E. Spriggs, all of Phoenix, for appellee.

LA PRADE, J.:

[1] The appellee is a corporation doing business as a motor carrier of passengers and property for hire under a certificate of convenience and necessity issued by the appellant Arizona Corporation Commission. See Chap. 66, Art. 5, Regulation of Public Highway Transportation, §§ 66–501 to 66-533, A.C.A.1939. A Mr. Hood, owning a share of stock in the appellee corporation, filed an application with the Commission for permission to transfer or assign his share of stock and "his interest" in the corporation to a Mr. Fix. The applicant shareholder proceeded upon the theory that he was one of the joint owners or associates or copartners in the ownership of the assets of the company, and disregarded the legal entity of the corporation. His apparent purpose was to transfer physically what he considered to be his interest in the certificate of convenience, completely disregarding that the corporation and not he owned the certificate of convenience and all other assets of the company. It is elementary that a corporation is for most purposes an entity distinct from its individual members or stockholders. By the very nature of a corporation the corporate property is vested in the corporation itself and not in the stockholders. The natural persons who procured its creation and have pecuniary interest in it are not the corporation. A portion of the Commission's order reads as follows:

"It is hereby *ordered* that the rights of Paul Hood shall be transferred to S. B. Fix."

The pleadings show that the Commission ordered the transfer of a share of stock in the appellee corporation from one shareholder to a prospective shareholder.

Upon the application being filed for the transfer of this share of stock, the appellee appeared before the Commission and resisted the petition upon the ground that the Commission had no jurisdiction under its power granted by law to transfer stock in a private corporation from one party to another. Notwithstanding the protest, the Commission made and entered its order that the transfer of said stock be made.

A rehearing was requested as authorized by § 69–248, A.C.A. 1939, and was denied. Thereafter the appellee brought this action in the superior court, as provided by § 69–249, A.C.A.1939, to have said order of the appellant set aside for the reason that the order or decision of the Commission was unlawful and not within its jurisdiction.

The sole issue presented to the trial court by appellant, as submitted by its counsel, was "whether or not the Corporation Commission has the power to transfer any stock of any corporation from one party to another." At the trial of the matter the Commission moved for judgment upon the pleadings, which motion was denied. The

appellee then moved for judgment upon the pleadings, which motion was granted and judgment entered thereon setting aside the order, and thereafter this appeal was perfected by the Commission.

The shareholder Hood and the prospective shareholder Fix filed a motion in the superior court for leave to intervene and tendered a proposed answer to plaintiff's complaint. The motion for leave to intervene was denied. The attempted interveners filed an appeal to this court from the order denying their motion for leave to intervene. Their appeal was dismissed by this court on motion upon the ground that they were without authority to appeal in this matter, not being parties to the judgment and not affected thereby.

[2] When the Commission assumed the power of transferring stock in a private corporation from one party to another party, it was infringing upon the power given by the legislature to private corporations. The order for the transfer made by the Commission was the exercise of a power granted exclusively to the corporation, and interfered directly and materially with its business and its relationship with its stockholders.

In the case of Wylie v. Phoenix Assurance Co. (1933) 42 Ariz 133, 137, 22 P2d 845, 846, there appears the following brief dissertation relative to the creation of the Commission and its powers and duties:

"The Corporation Commission is provided for by Article 15 of the state Constitution. It is given very broad powers over public service corporations. Sections 1, 2, 3. Its jurisdiction over corporations other than public service is limited by § 4 of said article to the 'power to inspect and investigate the property, books, paper, business, methods, and affairs of any corporation whose stock shall be offered for sale to the public'; and by § 5 it is given sole power to issue certificates of incorporation to domestic companies and licenses to foreign corporations to do business in this state, under such terms as the law may prescribe. The only powers conferred upon the Corporation Commission over corporations other than public utility are found in these two sections and these powers pertain to the right to investigate them when they are offering for sale to the public their stock, and to their qualifications to do business in the state."

[3] We have examined §§ 1, 2, and 3 of Art 15 of the state Constitution relative to the powers of the Commission over public service corporations. We have also examined Chap 66, Art 5, §§ 66–501 to 66–533, ACA 1939, relating to the regulation of public highway transportation. The foregoing chapter provides for the licensing and regulation of common motor carriers. Their regulation and supervision is vested in the Corporation Commission. The Commission has power to fix and regulate rates, facilities, time schedules, territory to be traversed; to prescribe uniform systems of accounts; to require reports, tariff schedules; and "to supervise and regulate such common motor carriers in all matters affecting the relations between such carriers and the public, and between such carriers, and other common motor carriers, to the end that the provisions of this act may be fully carried out." Section 66–504,

ACA 1939. Nowhere in the Constitution or in the statutes is the Commission given jurisdiction, directly or by implication, to control the internal affairs of corporations such as was attempted in the instant case. This court has uniformly held that the Corporation Commission, the industrial Commission, and other state agencies exercising some of the state's sovereign power have only such jurisdiction and can exercise only such powers as are expressly or by implication conferred upon them. State ex rel. Bullard v. Jones (1914) 15 Ariz 215, 137 Pac 544; Menderson v. Phœnix (1938) 51 Ariz 280, 25 PUR(NS) 168, 76 P2d 321; Corporation Commission v. Heralds of Liberty (1916) 17 Ariz 462, 154 Pac 202; Corporation Commission v. Pacific Greyhound Lines (1939) 54 Ariz 159, 32 PUR(NS) 503, 94 P2d 443; Industrial Commission v. Arizona Power Co. (1931) 37 Ariz 425, 439, 295 Pac 305.

[4] The Commission has set out as one of its assignments of error that the court erred in denying the appellant's motion for judgment on the pleadings upon the ground that the appellee was not a party in interest within the meaning of § 69–249, ACA 1939, permitting such a party to commence an action to vacate or set aside an order of the Commission. A party in interest within the contemplation of this statute has been defined as follows:

"Such a suit cannot be instituted by an individual unless he 'possesses something more than a common concern for obedience to law.' The general or common interest finds protection in the permission to sue granted to public authorities. An individual may have some special and peculiar interest which may be directly and materially affected by alleged unlawful action. See Detroit & M. R. Co. v. Boyne City, G. & A. R. Co. (1923) 286 Fed 540. If such circumstances are shown he may sue; he is then 'party in interest' within the meaning of the statute. In the absence of these circumstances he is not such a party." L. Singer & Sons v. Union P. R. Co. (1940) 311 US 295, 85 L ed 198, 61 S Ct 254, 258.

In the case at bar the Commission has and exercises plenary power over the corporation in the matter of fixing and regulating its rates, facilities, time schedules, territory traversed; its accounting system; its tariff schedules and reports; and supervises and regulates all relations between it and the public. The corporation under the license issued it was legally bound to accept such supervision and regulation, but, as above pointed out, the Commission has no authority or jurisdiction to control the internal affairs of the corporation. It cannot dictate who its officers shall be, whom it shall employ, who may invest money in it, nor what provisions it shall make for the recognition of its shareholders, nor the manner of transferring shares of stock upon its books. The corporation and its officers occupy a fiduciary relationship to its stockholders. To protect themselves they must at all times know who the stockholders are so that they may know those to whom they are responsible. Chaos would result in all corporations if the Corporation Commission, under the mantle of state authority, were permitted to dictate to a corporation to

whom to issue and transfer its shares of stock. We conclude that the corporation was vitally and materially affected by this pretended order and under the circumstances was a party in interest entitled to prosecute this suit.

[5] The appellant's second assignment of error to the effect that the court erred in granting the motion of appellee for judgment on the pleadings and declaring the order of appellant void for the reason that substantial questions of fact and issuable defenses were presented by the pleadings is not well taken, for the reason that the only question before the court was whether the Commission had the authority to transfer a share of stock from one party to another. The answer admitted the making of the order for the transfer. There was no question of issuable fact before the court, therefore, the motion for judgment on the pleadings was properly granted. Section 21–431, ACA 1939; Rules Civ Proc Rule 12(c); Engle v. Scott (1941) 57 Ariz 383, 114 P2d 236; Ulen Contracting Corp. v. Tri-County Electric Coöp. (1940) 1 FRD 284.

This appeal is patently without merit and evidently frivolous. The judgment is affirmed.

Stanford, C.J., and Morgan, J., concur.

MISSOURI PUBLIC SERVICE COMMISSION

Pioneer News Service, Incorporated

v.

Southwestern Bell Telephone Company

Case No. 10652
October 4, 1945

COMPLAINT *against threatened discontinuance of telephone service to subscriber disseminating racing information; continuance of service ordered.*

Service, § 59 — Jurisdiction of Commission — Denial of service used for unlawful purpose.

1. The Commission has jurisdiction to authorize a telephone company to discontinue service when it is shown that the service is being used for an unlawful purpose, although the Commission is not a criminal court and cannot adjudicate criminal cases, p. 51.

Evidence, § 18 — Suspicions.

2. Suspicions do not constitute that substantial evidence upon which a Commission finding must be based, p. 51.

Evidence, § 18 — Inferences — Illegal use of telephone service.

3. A conclusion that telephone service is being used for an unlawful pur-

pose cannot properly be reached by basing one inference upon another inference, p. 51.

Gambling — Disseminating information on racing — Legality.

4. The business of furnishing or receiving information concerning horse racing or other sports is not unlawful in a state where horse racing is not prohibited by law, p. 51.

Service, § 134 — Grounds for denial — Dissemination of racing information.

5. A telephone company may not refuse service to a company furnishing or receiving information concerning horse racing unless it is shown by substantial evidence that the subscriber is knowingly using the telephone service for an unlawful purpose, p. 51.

Service, § 489 — Burden of proof — Illegal use of telephones.

6. A telephone company, in order to justify denial of service to a subscriber furnishing or receiving information concerning horse racing, must prove that the subscriber's customers are using its service, transmitted by means of the company's telephone facilities, for unlawful gambling purposes, p. 52.

(Wilson, Commissioner, dissents.)

By the Commission: This matter comes before the Commission upon a complaint filed by Pioneer News Service, Inc. (hereinafter called complainant), complaining that Southwestern Bell Telephone Company (hereafter called telephone company) in the city of St. Louis, Missouri, has notified complainant that its telephone and private wire service will be disconnected on a named date and further complaining that there is no lawful reason why such service should be discontinued.

Following this complaint, the Commission in compliance with its rules issued its order directed to the telephone company requiring that the matter complained of be satisfied or that the complaint be answered and the telephone company thereby show cause why the complaint of Pioneer News Service, Inc., should not be satisfied. In compliance with said order the telephone company did file an answer charging therein in substance that Pioneer News Service, Inc., is engaged in the business of supplying its customers for a substantial remuneration with rapid and prompt information concerning horse races conducted in various places in the United States; that such information is disseminated from the offices of complainant at 122 North Seventh street in St. Louis, Missouri, by means of private wire service from said offices to the premises of customers and also by exchange service, all of which is furnished by the telephone company.

The answer further infers and states that the company believes that the dissemination of such information by complainant was for the purpose of supplying complainant's customers with such information for the illicit and unlawful activity of making books on horse races. The answer further stated that the telephone company was apprehensive that it might be subjected to criminal liability and prosecution if it continued to supply such service to complainant and that it had been requested by the Federal Communications Commission to discontinue the

use of its facilities for the dissemination of horse-racing information, this request having been prompted by a similar request from the Board of War Communications to the Federal Communications Commission.

The cause was set for hearing and was heard before the Commission en banc on Monday July 16, 1945. At the commencement of the hearing complainant filed a reply to the telephone company's answer wherein it admitted the nature of complainant's business substantially as set out in the answer but denied that complainants were engaged in any unlawful business or that its service was used for unlawful purposes. The reply further charged that the Public Service Commission is without jurisdiction to investigate or regulate the conduct or morals of complainant or its customers and that the telephone company was without authority to investigate, censor, or regulate the public or private conduct of complainant or its customers. The reply further charged that should the Commission authorize the telephone company to discontinue its service to complainant that such act would be a violation of complainant's rights under specified sections of the Constitution of Missouri and specified amendments to the Constitution of the United States.

At the hearing it was conceded by all parties that the burden of going forward with the evidence was upon the telephone company and accordingly it proceeded to call witnesses. Its first witness was Clarence Z. Owen, who testified that he was president of Pioneer News Service, Inc.; that the nature of that company's business is as set out in the reply in this cause and that the method of conducting such business is as set out therein. He was asked concerning knowledge of certain of the complainant's customers but stated that he did not know them and that he did not know the places where the lines used by complainant terminated. He also stated that he did not know what use complainant's customers made of the information obtained from complainant; that complainant obtained information from a company in Cleveland concerning all sports, particularly horse racing at the various race tracks throughout the United States and that this information, together with the information concerning other sports was the information which was distributed to complainant's customers, through the telephone facilities supplied by the telephone company; that the customers paid from $35 to $50 per week for this service; that in addition to the above service, complainant also publishes and distributes a daily news sheet which is called Pioneer News Service, Inc. Sports Review which gives information concerning horse racing and other sports.

The next witness called was one Clifford G. Wassall, a district manager for the company who described the telephone service used by complainant. He stated that complainant had seventeen individual lines and business telephones; that fourteen of this number were nonpublished numbers not shown in the company's telephone directory and that in addition complainant had a number of private lines which rendered service only between complainant's premises and the premises of a customer elsewhere. One of these private lines terminated at 5548

Delmar in St. Louis, another at 4011 McRee in St. Louis and another at 3345 North Euclid in St. Louis; that at 3345 North Euclid the company also furnished two nonpublished telephones and that the customer at said address was one J. L. Stevens.

Another district manager for the company, one Max W. Newby, was next called as a witness and testified that the company's records showed that at 5548 Delmar there was a direct residence line and an extension with service being rendered to a Mr. C. J. Roberts and that at 4011 McRee there were two nonpublished business telephones with service being furnished to one Simon Hart.

The next witness called, one Mr. F. J. Kleinhoffer, who testified that he lived at 3345 North Euclid; that he was a brick mason by trade but was not working at his trade because building materials were not available. He further said that he knew J. L. Stevens who was in the pressing, cleaning, and dyeing business and at one time had resided with the witness; that Stevens subscribed for the telephone service but that Stevens had left and he had taken it over; that he paid for the two nonpublished business lines and also paid for the private wire from complainant; that the private wire cost him $25 per week and the two business phones $14 per month each; that he used these facilities for his own purposes. He denied that he made a book on races. He was asked if he sometimes took bets and answered, "I have but I am not taking any bets now," and denied that he took any bets by telephone. He further said that he did not know of the whereabouts of J. L. Stevens and that he had not seen Stevens for several months.

The company next called for one Charles Broadhead who had been duly subpoenaed as a witness but the said witness upon being called failed to appear. The company then called for one Sid Wyman as a witness but this witness upon being called also failed to appear. The company then called one Leo W. McCarthy, an assistant attorney for the company and it was shown by this witness that both Charles Broadhead and Sid Wyman were duly subpoenaed as witnesses to appear at this hearing. This witness further testified that he was unable to find one C. J. Roberts for whom a subpoena was issued and was also unable to find one Simon Hart for whom a subpoena was issued. He also described the building at 3345 North Euclid where Mr. Kleinhoffer resided as a one-story building appearing from the outside to be a 5-room bungalow. The company then introduced in evidence an ordinance of the city of St. Louis and with this showing the company rested its case.

At the commencement of the hearing and before the reception of any evidence, counsel for complainant made several oral motions and objections in the nature of motions for judgment upon the pleadings and questioning the Commission's jurisdiction to authorize the company to discontinue its service to the complainant on the grounds alleged in complainant's answer. At the close of the evidence complainant's counsel again moved for a favorable order upon its complaint. All of these matters have been taken with the case and are con-

sidered with the case upon its merits. Complainant offered no evidence.

[1] We do not agree with the contention of complainant's counsel as to the jurisdiction of this Commission to authorize the telephone company to discontinue its service when it is shown that the telephone service is being used for an unlawful purpose. We agree that this Commission is not a criminal court and that it cannot adjudicate criminal cases but we do think that the regulatory powers granted this Commission by the Public Service Commission Laws are broad enough to authorize this Commission to permit a telephone company to disconnect its service when it is shown to the Commission by substantial evidence that the telephone is being used in the furtherance of an unlawful enterprise.

[2] The evidence offered by the company creates a strong suspicion of bookmaking, at least by its bricklaying customer, Mr. F. J. Kleinhoffer, who was using such extensive and expensive telephone service and private wire service from complainant in his bungalow at 3345 North Euclid "for his own purposes." We further suspect from the showing made that Mr. Kleinhoffer was using telephone service in carrying on bookmaking. However, our suspicions do not constitute that *substantial evidence* upon which our finding must be based under the provision of § 22 of Art 5 of the Constitution of Missouri.

[3] Our suspicion that betting on horse races was being carried on at the residence of Mr. Kleinhoffer arises by inference from the circumstances shown in evidence, but in order to say that Mr. Kleinhoffer was using telephone service for the purpose of receiving or placing bets upon horse races, we would have to pile an inference on an inference and draw the conclusion that telephone service was being used for an unlawful purpose by inferring such fact from our inference that Mr. Kleinhoffer was a bookmaker. As to complainant, in order to find its use of telephone service unlawful, again we not only have to infer that Kleinhoffer or other customers were making books on horse races but we would have to again infer from that inference that complainant had knowledge of such betting and was knowingly using its telephone lines in the furtherance of that unlawful occupation. It is Hornbook law that a fact-finding body cannot arrive at a conclusion of fact by basing one inference upon another inference.

[4, 5] We have searched the law books to find some precedent by which we could determine whether or not the mere furnishing or receiving of information concerning horse racing or other sports, which all the evidence before us shows complainant is doing, could be considered gambling and a violation of the criminal laws.

We have searched the Missouri statutes and find no law prohibiting horse racing, neither do we find any law saying that the dissemination of racing information is unlawful. The ordinance of the city of St. Louis placed in evidence by the company has no bearing on this point. For a precedent we have had to look to the decisions of courts of other states. Respectable authorities hold that the dissemination of horse-racing information is not gambling and is not a

crime. In People v. Brophy (1942) 49 CalApp2d 15, 33, 120 P2d 946, 956, the California court of appeals said:

"Public utilities and common carriers are not the censors of public or private morals, nor are they authorized or required to investigate or regulate the public or private conduct of those seeking service at their hands. . . . The telephone company has no more right to refuse its facilities to persons because of a belief that such persons will use such service to transmit information that may enable recipients thereof to violate the law than a railroad company would have to refuse to carry persons on its trains because those in charge of the train believed that the purpose of the persons so transported in going to a certain point was to commit an offense, or because the officers of such company were aware of the fact that the passengers were intent upon visiting a bookmaking establishment upon arrival at their destination, which establishment was maintained for the purpose of unlawfully receiving bets on horse races. Furthermore, the furnishing or receiving of racing or sporting information is not gambling and is not a crime."

In Pennsylvania Publications v. Public Utility Commission, 349 Pa 184, 53 PUR(NS) 217, 36 A2d 777, the supreme court of Pennsylvania in 1944 said:

"A racing publication containing information relating to horse racing is not a device or apparatus for gambling, such as would justify a telephone company in refusing service to the publisher, although it is useful to the gambler in placing wagers.

"Telephone companies may not refuse service to persons engaged in legitimate enterprises merely because such subscribers may furnish information over the telephone facilities which may enable others receiving it to use it illegally.

"Free information service by telephone furnished by the publisher of a racing sheet whereby purchasers of the publication can call the publisher and secure racing information does not come within the provision of the statute making it unlawful for a utility knowingly to furnish a private wire for use in the dissemination of information in furtherance of gambling."

From the foregoing authorities it seems clear that the business of Pioneer News Service, Inc., is a lawful business and that the telephone company may not refuse service to complainant unless it is shown by substantial evidence that the complainant is knowingly using the telephone service for an unlawful purpose.

[6] Among other things, it was incumbent upon the telephone company in this case, in defense of its threat to discontinue the use of its telephone facilities by the complainant, and in support of its answer filed herein, to prove that complainant's customers were using complainant's service, transmitted by means of the company's telephone facilities, for the unlawful purposes alleged in its answer filed herein. If wagers or bets were taken, or books made, on horse races, by the complainant, or by the various customers of complainants, or any others, at the said points served by the telephone company's lines, or elsewhere, it was not proven or admitted in this case. Neither was there any

proof that such customers at such points or elsewhere operated or conducted any such a gambling business sometimes called "bookie shops" or other names.

The telephone company undoubtedly had some factual basis for its belief that its facilities were being used in furtherance of such gambling, if not when it sent its notice that it would sever its telephone service, at least when it filed its answer to this complaint, and such facts, we will assume for argument sake, furnished reasonable cause for the telephone company to believe that its instrumentalities were being used in furtherance of an unlawful enterprise. But when the issues were joined herein then proof of the vital issues above mentioned was necessary. We cannot, on a hearing herein, on the issues joined, absolve the telephone company merely because at the time it might have believed that its facilities were being so subverted. To do so would leave the telephone company as the sole judge of the facts and if it should be in error in its conclusion the telephone patron would be without a remedy at our hands. It is our view that on the issues joined the facts must be, and should be, proven. But this the company signally failed to do, although, if the facts existed, it seems to us that the telephone company could have easily secured and produced such evidence.

Why such evidence was not obtained and offered at the hearing before this Commission is not for us to say, but suffice it to say that there was a complete failure of proof on the part of the telephone company. This Commission has no choice as the record stands before us but to order the telephone company to continue its service to complainant until such time as complainant may voluntarily relinquish the service or if on another and similar proceeding it may be shown that the company is justified in discontinuing the service because of unlawful use. The complaint before us stands unsatisfied.

It is, therefore,

Ordered: 1. That Southwestern Bell Telephone Company of St. Louis, Missouri, continue to render its telephone service to Pioneer News Service, Inc., of St. Louis, until such time as same may be discontinued by mutual agreement of said parties or until the further order of this Commission.

Ordered: 2. That this order shall take effect ten days after the date hereof, and that the secretary of the Commission shall forthwith serve a copy hereof upon all interested parties, and that said parties shall notify the Commission before the effective date of this order in the manner prescribed in § 5601 Rev Stats Mo 1939, whether the terms of this order are accepted and will be obeyed.

WILSON, Commissioner, dissents in separate opinion.

WILSON, Commissioner, dissenting: Upon the record in this case I cannot agree with the conclusion reached in the majority report and order. This Commission is without jurisdiction to determine whether a crime has been committed. We have no criminal jurisdiction.

It has been pleaded by the telephone company herein that the complainant company is engaged in supplying

prompt information concerning horse races primarily by means of private telephone circuits furnished by the telephone company; that "the said information has no known value or use except to facilitate so-called bookmaking on horse races"; that the telephone company believes that the complainant's customers are engaged in the illicit and unlawful activity of bookmaking on horse races; that the defendant is apprehensive that it may subject itself to criminal liability and prosecution if it should allow the continued use of its services and facilities, and is particularly apprehensive of such criminal liability under a certain ordinance of the city of St. Louis which reads as follows: "Section 2078 (2106) Penalty for illegal use of wires.—Any person, firm, or corporation stringing wires to places used for immoral purposes or existing unlawfully, or wires used for any illegal purposes, shall be deemed guilty of a misdemeanor, and on conviction thereof be fined not less than $10, nor more than $500."

Bookmaking is a crime and punishable under § 4673, Rev Stats Mo 1939 which provides in part as follows: "Section 4673. Bookmaking and poolselling.—Any person who occupies any room . . . or building . . . in this state and who occupies the same with any book, instrument, or device for the purpose of recording or registering bets or wagers or selling any pools upon the result of any trial or contest of skill, speed, or power of endurance of man or beast which is to be made or to take place within or without this state; . . . shall, on conviction, be adjudged guilty of a felony, and shall be punished by imprisonment in the penitentiary for a term of not less than two years nor more than five years, or by imprisonment in the county jail for a term of not less than six months nor more than one year, or by a fine of not less than $500, or by both such fine and imprisonment."

Section 4674, Rev Stats Mo 1939 provides in part as follows: "Section 4674. Same subject. . . . or any person who occupies any room . . . building or enclosure, or any part thereof, in this state with any telephone or telegraph instrument, or any apparatus or device of any kind whatsoever, for the purpose of communicating information to any place in this or any other state, for the purpose of there recording or registering bets or wagers or selling pools upon the result of any trial or contest of skill, speed or power of endurance of man or beast, which is to be made or to take place within or without this state . . . shall, on conviction, be adjudged guilty of a felony, and shall be punished by imprisonment in the penitentiary for a term of not less than two years nor more than five years, or by imprisonment in the county jail for a term of not less than six months nor more than one year, or by a fine of not less than $500, or by both such fine and imprisonment."

Section 4632, Rev Stats Mo 1939, makes conspiracy a crime and provides for its punishment.

The complainant, as pointed out in the majority report and order, alleged in its reply that the Public Service Commission is without jurisdiction to investigate or regulate the conduct or morals of complainant or its customers. At the beginning of the

hearing, at which time complainant's reply was filed, counsel for the telephone company stated his opinion to be that the Commission does not have jurisdiction to determine whether or not the conduct and actions of the complainant are lawful or unlawful and conceded that part of complainant's reply. The majority of the Commission, ante, at p. 51, in discussing the question of jurisdiction, made this statement: "We agree that this Commission is not a criminal court and that it cannot adjudicate criminal cases, but we do think that the regulatory powers granted this Commission by the Public Service Commission Laws are broad enough to authorize this Commission to permit a telephone company to disconnect its service when it is shown to the Commission by substantial evidence that the telephone is being used in the furtherance of an unlawful enterprise." That statement is hardly applicable to the facts presented by the record in this case. If the telephone company had presented a record of conviction of any officer of the complainant company, Pioneer News Service, Inc., the situation would have been different, for then the Commission would not have been called upon to determine whether a crime had been committed, as that fact would have been established by the conviction in a court of criminal jurisdiction, and the Commission in such a case would have jurisdiction to authorize the telephone company to discontinue its services. If the telephone company had presented evidence that it had received notice from any official charged with the enforcement of the law stating that the telephone service being rendered to Pioneer News Service, Inc., was being used as an instrumentality to violate the law, then the telephone company would be authorized to discontinue service under its tariff now on file with this Commission, PSC Mo—No. 16, Termination of Contracts, which the Commission permitted the telephone company to file with this Commission on September 23, 1943, and which became a part of the contracts between the telephone company and subscribers, and which provides as follows:

"B. The telephone company shall be authorized to discontinue service upon notice from any official charged with the enforcement of the law stating that such service is being used as an instrumentality to violate the law."

There is no direct evidence before us that the telephones in question were used in placing bets on horse races, but in view of the circumstances shown in evidence there appears to be some ground for the telephone company's apprehension that it might subject itself to criminal liability and prosecution. The president of the complainant company was called as a witness by the telephone company and testified that he did not know the complainants in companion cases filed herein whom other evidence showed to be customers of the Pioneer News Service, Inc.; that he did not know where any of the private lines of the company terminate nor who its customers are nor how much his company charges for its services nor who pays for it. When asked what use was made of the information services furnished by his company to its customers the president of the company replied, "I wouldn't know."

One of the witnesses, an unemployed brick mason, testified that he had two nonpublished telephone lines going into the basement of his house, but did not have a telephone in any other part of the house. This telephone service for the private wire from the complainant company costs this witness at least $128 per month.

With reference to the use made of these telephones, the testimony is as follows:

Q. You have a drop off the Pioneer News Service?

A. Yes.

Q. What kind of information do you get off that wire?

A. Well, it is news, I use it for my own purposes.

Q. You and your wife use it for your own amusement?

A. No, she wouldn't be interested in it.

Q. You use it alone, do you?

A. That is right.

Q. You don't make the book down there in that basement?

A. No, I don't take any bets on the telephone.

Q. Do you make the book?

A. No.

Q. You sometimes take bets?

A. I have, but I am not taking any bets now.

(R. p. 34–35, July 16, 1945.)

In view of this testimony and the fact that the public policy of the state is against gambling as evidenced by the statutes herein set out, I do not think the Commission, a department of the state government, should order the telephone company to continue service to the complainant. I do not think the Commission upon this record can make a finding that the complainant is violating the criminal laws, nor do I think the Commission should presume to make a finding that the complainant is not engaged in unlawful activities. It is my opinion upon a consideration of the whole record that this Commission does not have jurisdiction of the issue herein involved and that the complaint should be dismissed and that the parties should try the issue in the courts.

MISSOURI PUBLIC SERVICE COMMISSION

Re Citizens Telephone Company

Case No. 10606
October 10, 1945

APPLICATION *for authority to file new schedule of telephone rates; application denied but company authorized to file, subject to review of Commission, revised schedules based on wage increase.*

Expenses, § 99 — Proposed wage increase.

1. A proposed wage increase, pursuant to a pending application to the War Labor Board, should be ignored and on an application for authority to increase rates present earnings should be considered, p. 61.

Valuation, § 74 — Original cost figures — Write-ups.

2. The Commission, in determining the rate base where original cost figures only are before it, should rely upon its accountant's figures when there are write-ups in the amounts submitted by the company, p. 61.

Rates, § 146 — Reasonableness — Higher cost of service — Wage increases.

3. Rates should be sufficient to provide a company with funds necessary to pay increased wage scales when increased wages are necessary in order to retain employees, although present rates should not be increased in order to provide the company with funds to be used for contingent wage increases to be made at some future time as wage scales are gradually accelerated according to a schedule, p. 63.

Rates, § 181.1 — Inflationary effect — War period.

Views of witness for Office of Price Administration relating to stabilization of prices, wages, and salaries; inflationary spiral; and the meaning of inflation, in rate proceeding of telephone company during a war period, p. 60.

By the COMMISSION: This case is before the Commission upon application of the Citizens Telephone Company, filed February 5, 1945, for authority to file a new schedule of rates for telephone service, increasing the rates at Higginsville, Corder, and Mayview, Lafayette county, Missouri. The Citizens Telephone Company having advised the Administrator of the Office of Price Administration of the proposed rate increase, the Administrator, for himself and on behalf of the Economic Stabilization Director, filed a petition on March 30, 1945, for leave to intervene and become a party to the proceeding. The Commission issued its order on March 31, 1945, making the petitioner (hereinafter sometimes called intervenor) a party to the proceeding and directing him to file answer. An answer was filed by

the intervenor on April 10, 1945, praying that the application be set for hearing, that the proposed increase in rates be denied, and that the application be dismissed.

After due notice of hearing the case was heard before the Commission en banc on May 22 and June 1, 1945, at which time oral testimony and documentary evidence was received. The intervenor filed a memorandum on June 11, 1945, urging denial of the application in all respects.

The evidence shows that the applicant, a Missouri corporation, incorporated in 1908, operates three exchanges, located in the towns of Higginsville, Corder, and Mayview, Missouri, and their respective surrounding rural territories. The applicant's rate schedules have not been revised for twenty-five years. The number of main line stations served at the respective exchanges at December 31, 1944, and April 30, 1945, are set out in Table I: [Tables omitted.]

The applicant desires authority to increase rates for a number of reasons. According to the applicant's general manager, the cost of operation and maintenance, particularly labor costs because of wage-hour requirements, has become so heavy that the revenues are insufficient to earn a fair return on the property devoted to public service. Further, because of the 40-cent minimum required to be established at July 17, 1944, some of the skilled operators and supervisors with considerable seniority are now receiving but 40 cents an hour, the minimum paid to all employees. In order to remove the inequity, the applicant sought authority to make an adjustment in wage schedules, and to set up a classification in order to pay experienced employees a wage commensurate with their ability. The company had been considering job classification and merit increases prior to the time the 40-cent minimum was established.

In its application to the War Labor Board for such authority, the telephone company asked that the proposed wage schedule be made retroactive to July 17, 1944, and was granted leave by that board to increase the scale with the reservation that if a rate adjustment was sought the proposed wage scale would become effective (a) upon determination by the Economic Stabilization Director that a rate change is not required, or (b) upon his approval of the rate revision. It was claimed that the wages proposed are not high for if they are brought to the middle of the bracket, they are less than the 50-cent minimum recognized and paid by certain nondefense industries in the community. It was claimed that the applicant's employees stayed on with the telephone company with the understanding that the wages would be retroactive. The new wage scale is not yet in effect.

The evidence shows that the townspeople were notified of the proposed increase by a statement published in the local newspaper, and that no objections have been made. The mayor of Higginsville testified at the hearing that he did not object to the increase and knew of no objections. He stated that he desired rates that would permit the company to operate efficiently. The claim that the people in the vicinity had been informed of the proposed increase and that no objec-

ion had been made was corroborated y another witness.

The company claims the following riginal cost of its property used in ublic service at December 31, 1944:

Land	$5,300.00
Depreciable Assets	112,953.91
Total	$118,253.91

In addition it claims that $8,000 is needed for working capital.

At the time the application was filed, the company requested the Commission to send an accountant to check the books with the company auditors. The Commission complied by sending an accountant who was instructed to attempt to get the closest approach possible to the original cost of the property without taking a long time for review, and to examine the records with respect to revenues and expenses.

The Commission accountants recommended the elimination of an item of $11,063.63 from the original cost, resulting in a balance of $107,190.28 as of December 31, 1944. The amount eliminated was on the books of the company because of an appraisal having been recorded at some prior date. In the opinion of the Commission accountants, a more complete study would produce an original cost of at least $107,190.28. They recommended that $3,542.61, the average balance in materials and supplies for 1944, be used as an allowance for materials and supplies, and that no allowance be made for cash working capital.

The company's 1944 Profit and Loss Statement is summarized as follows:

Profit and Loss Statement
Year 1944

Operating Income	
Exchange Revenue	$27,568.44
Toll Revenue	14,506.89
Miscellaneous Revenue	455.18
Total	$42,530.51
Operating Expenses	
General Office Salaries	$6,818.56
Operators Salaries	12,718.45
Salaries and Labor Used in Repairs, Etc.	4,230.00
	$23,767.01
Depreciation	5,898.70
Taxes	3,928.01
Other Expenses	6,841.59
Total	$40,435.31
Net for Return	$2,095.20

The Commission accountants, from their examination of the revenues and expenses, recommended and made certain adjustments resulting in the following adjusted figures:

Operating Revenues	$42,431.19
Operating Expenses	33,722.07
Net for Depreciation and Return	$8,709.12
Depreciation	5,898.70
Net for Return	$2,810.42

The company claims that the adjustment of salaries and wage scales as proposed will cause increases in operating expenses as follows:

General Office Salaries	$300.16
Operators' Salaries	6,823.15
Salaries and Labor in repairs, etc.	516.28
Total	$7,639.59

The company's estimate of increase in annual revenues resulting from application of proposed rate to the number of stations at December 31, 1944, is as follows:

Higginsville	$5,040.36
Corder	1,068.00
Mayview	682.20
Total	$6,791.16

Owing to the marked increase in the number of subscribers since December 31, 1944, the Commission accountants calculated the effect of the rate increase to reflect the number of subscribers at April 30, 1945, and estimated the amount to be $8,710.70.

The company estimated that on the basis of present rates the annual revenue to be derived from the increased number of subscribers would be $1,527. The claim was made that the cost of operation had increased since January 1, 1945, to the extent of $657 annually, based on the present rates of pay.

We have no figures before us concerning the depreciation existing in the property. The credit balance in the company's Depreciation Reserve at December 31, 1944, was $67,691.11. The Commission's chief accountant found that about $11,000 had been provided from surplus, leaving about $56,000 as a balance derived from charges to Operating Expenses. He further estimated that, of that amount, interest should be applied to a sum of about $40,000 if the Commission proposes to follow the method outlined in General Order No. 38-A.

The Commission's engineers, after an examination of the property, recommended an annual depreciation allowance of $4,000 per year. This is in contrast to the sum of $5,898.70 now being set aside by the company and used in previous tabulations.

Counsel for the intervenor through cross-examination suggested that the operating expenses should be further reduced by $139.05 for a fire loss in 1944, and by $282 as an adjustment in income tax on nonutility income. He also contended that the depreciation reserve should be something more and not less than $56,000 and that the rate of interest to be applied to that should be the rate of return earned by the property. This latter claim is based on the premise that the entire depreciation reserve is reinvested in the company's utility property.

It was also contended that the application was untimely in that the wage increases proposed had not yet been approved. The argument was made that the position of assistant manager (at an annual salary of $1,800) was created, and authority for its establishment was granted, by the Salaries Stabilization Unit under a provision that rates were not to be increased because of additional expenses so incurred.

The witness for the Office of Price Administration, its chief economist in the Public Utilities Branch of the Transportation and Public Utilities Division, testified that stabilization of prices, wages, and salaries affecting the cost of living was necessary in the interest of national defense and security, and because of the need for effective prosecution of the war; that hardships might result to the nation's citizens from inflation and the greatly increased cost of the war that would attend the lack of strict price control; and that the prevention of small increases in prices and rates is a significant matter in that the cumulative effect of millions of small increases in prices and other costs throughout the economy starts an inflationary spiral.

He defined inflation as a general across-the-board increase in the level of prices, stating that inflation is caused by individual price increases of

whatever size that are exacted for an exchange of goods or service in the period of general rise in prices and claimed that the proposed increase in telephone rates and charges of the Citizens Telephone Company would have an effect on the economic stabilization program in that it would affect directly the cost of living to all customers in their capacity as consumers, that it would have an effect upon them as employees because of their effort to try to maintain their financial status intact by turning to their employer and look for wage increases, and that the employer would be affected in that telephone service is a cost of doing business and, if rates are increased, his income after expenses would tend to be decreased by the amount of the rise in telephone service.

The witness suggested that there would also be indirect effects in that the prices for employers' products would tend to be increased because the employer has been subjected to an increased cost which he is entitled to include in his claimed expenses when appealing for price relief. It was also suggested that if a change in rate is permitted in one part of the telephone industry, other companies operating in similar territories would be encouraged to make a like request for an increase. The statement was made that the indirect effect would not even be confined to the telephone industry, but would tend to destroy the economic stabilization program as such. It was pointed out that any increase in rates or prices which occurred currently increases the possibility for a collapse in prices at a later date.

In the witness' opinion there is no relationship between inflation and the size of an individual increase. He stated that the measure of inflation is the rise in price level. It was claimed that the nature of inflation is a series of small increases and that the price level during inflation increases rather slowly, an increase of only one to two per cent a month being considered a serious rate of rise. It was also stated that there is no connection between inflation and the rate of profit that a company is earning, inflation being a price level matter and not a profit matter.

[1, 2] In considering this application, it appears reasonable for us to consider the company's earnings at present, ignoring the proposed wage increase. Giving effect to the number of subscribers at April 30, 1945 ($1,527 increase in annual revenues over 1944), to the estimated $657 increase in operating expenses because of additional operators, to a reduction in the annual depreciation allowance (for we are of the opinion that $4,000 per year is ample), and to the 1944 fire loss which should be excluded, we have the following:

1944 Revenue as adjusted by PSC accountants	$42,431	
Estimated increase in revenue	1,527	
Total revenue for 1945		$43,958
1944 adjusted expense	$33,722	
Estimated expense increase	657	
Estimated additional income tax ($1,527—$657) x 27%	235	
Prop. Annual depreciation allowance	4,000	
Total	$38,614	
Less 1944 fire loss	139	
		38,475
Available for return (Assuming no interest on depreciation reserve.)		$5,483

The only elements of rate base in-

formation before us are the original cost figures of the company and of our accountants of $120,254 and $110,733, respectively, including working capital in the former and materials and supplies in the latter. Of the two, it appears that we should rely upon our accountants' figure because of write-ups (which we consider improper) in the amounts submitted by the company. But neither figure gives effect to depreciation. We have before us the $67,000 depreciation reserve, of which our chief accountant has determined that not more than $56,000 was assembled from charges to operating expenses. This reserve is approximately one-half of the original cost of the property. It becomes evident that if the depreciation reserve were deducted from the original cost, or if the reserves were credited with the earnings on depreciation reserve, the amount available for return would be sufficient to constitute a fair return on such a rate base.

The record is not conclusive either as to original cost or depreciation reserve, but we are of the opinion that the information before us is sufficient to show that the applicant is not entitled to increase its rates if the present level of operating expenses is maintained.

Approval or denial of the proposed rates hinges upon the proposed salary and wage increase. We are wholly sympathetic with the efforts of the Office of Price Administration and the Director of Economic Stabilization to prevent inflation. We recognize also that if telephone service continues to be rendered to the community at Higginsville, it may be necessary for the company to increase wages in order to retain its staff of employees.

We are confused concerning the increase in annual salaries and wages proposed by the applicant. Although the estimated annual increases may be determined definitely from the application as follows:

General Office Salaries	$300.16
Operators Salaries	6,823.15
Salaries, Labor, Repairs, etc.	516.28
Total Estimated Increase	$7,639.59

We find on further examination as disclosed by the testimony, that the operators' wages (as applied to the actual number of hours worked during the period July 16, 1944, to December 31, 1944, and calculated on the basis of bringing each employee to the middle of the wage bracket) amounted to $4500 annual increase. Testimony shows that the additional $2,300 was probably due to additional overtime and to a bracket for additional increases on the theory that such increases would be made from time to time. In addition, it appears (although it is not so stated in the record) an allowance may have been made in order to provide for the increase in wages in compliance with the 40-cent per hour minimum, which was established July 16, 1944. The expenses for the year 1944 reflect that increase only for the period after July 16th and obviously some provision should be made to reflect payment of the minimum scale throughout succeeding years.

Counsel for intervenor questioned the amount for the increase, showing that the telephone company, in its application for approval of a wage rate adjustment, estimated that expenses would be increased by $2,000 a year,

and that the estimate made at that time included not only the wage increase now proposed, but also that which was occasioned by the establishment of the 40-cent per hour minimum.

Being unable to reconcile the company's estimate of wage increases with the testimony, we requested counsel for the company to supply us with a copy of the statement upon which the estimated increase in wages was based. The statement now submitted is summarized as follows:

1945 earnings at wage rates set forth in wage and salary rate application	$29,704.81	
1944 earnings at wage rates in effect prior to July 16, 1944	23,919.09	
Increase because of change in wage scale		$5,785.72
Cost of additional employees over the above 1944 employment		1,689.30
Total increase		$7,475.02

This latter tabulation loses sight of the fact that the wages paid subsequent to July 16, 1944, under the 40-cent minimum requirement, are reflected in 1944 operating expenses. On the basis of the company's calculation, the increase was $473.54 during that period, so the increase proposed is overstated by that amount at least. In addition, testimony previously given shows that the company's annual operating expenses have become $657 per year greater because of increased operating time. We have previously given effect to that increase, but whether it is a duplication of the amount included in the $1,689.30 item is not known.

[3] We are of the opinion that, if it is necessary for the company to pay increased wage scales in order to retain its employees, the rates to be charged for service should be sufficient to provide the company with such funds. It should be understood, however, that we do not propose to permit rates to be increased in order to provide the company with funds to be used for contingent wage increases to be made at some future time, as wage scales are gradually accelerated, according to a schedule. As stated previously, the company's showing as to what its expenses actually will be, upon the inauguration of the wage scales which it has sought authority to place into effect, is not definite enough for us to determine the additional revenue required. For that reason, it appears that authority to increase rates should be conditioned upon a showing as to the actual annual payment that will be made by the company upon receipt of the authority to increase wage rates and as to the additional payments due to increases in personnel.

After careful consideration of all the facts and evidence the Commission is of the opinion and finds that the company's application for an order to authorize it to file rates as proposed in the application be denied, but that the company should be authorized to file revised rate schedules, subject to the review of the Commission, which will yield an increase in annual revenues not greater than the actual annual increase in operating expenses as occasioned by additional personnel and the wage schedules to be inaugurated, which schedules after review by the Commission shall become effective on such date as may be authorized by the Commission.

It is, therefore,

Ordered: 1. That the application of Citizens Telephone Company to file the rates for exchange telephone service as set out in its application of February 5, 1945, be and it is hereby denied.

Ordered: 2. That Citizens Telephone Company may file, subject to the review of the Commission, effective on such a date that may be authorized by the Commission, revised rate schedules for exchange telephone service at Higginsville, Corder, and Mayview, which, when applied to the number and classes of subscribers at April 30, 1945, shall not yield an annual revenue greater than the sum of the amount determined by application of present rates plus the amount of the annual increase in wages (above the minimum scale now paid) plus the salary of additional personnel as hereinbefore discussed, as may be authorized and actually paid.

Ordered: 3. That the rate increases suggested in *Ordered:* 2 shall in no wise reflect prospective increases in wage payments and shall earn only the annual amount of wage increases which will result upon receipt of requisite Federal authority, plus the salary of additional personnel as hereinbefore discussed.

Ordered: 4. That this report and order shall take effect ten days after this date and that the secretary of the Commission forthwith serve certified copies of same on all parties interested herein and that each of said parties shall notify the Commission before the effective date of this order in the manner prescribed in § 5601, Rev Stats Mo 1939, whether the terms of said report and order are accepted and will be obeyed.

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Titled "Illumination — Fundamentals and Application," the course will be available at cost, $225, from Westinghouse lamp division district offices located in New York, Philadelphia, St. Louis, Chicago, San Francisco, Boston, and Atlanta.

The many changes in lighting engineering and the advances in new light sources, lighting techniques, and equipment have made obsolete much of the previous information on these subjects, according to D. W. Atwater, manager of commercial engineering for the Westinghouse lamp division. This course is designed to enlighten newcomers to the ranks of utility salesmen and at the same time be a refresher for the more experienced salesmen.

Eberhardt Named Vice President Of Walter Kidde & Company

THE board of directors of Walter Kidde & Company, Inc., announced recently that Paul W. Eberhardt has been elected to the office of a vice president. His principal duties will include management of domestic sales of the company's fire-fighting equipment in aviation and general industry, together with general supervision of field selling activities.

Mr. Eberhardt joined Walter Kidde & Company in 1926 as manager of the public utility department to assist in the development and sale of fire protection equipment for this field. In 1928, he was made manager of the industrial department (the public utilities department being merged therein) and in the early part of 1944, Mr. Eberhardt was given in addition full responsibility for the activities of the field sales force. This latter field now covers all industrial and utility sales in the United States for Walter Kidde & Company.

Maytag Range Sales Manager

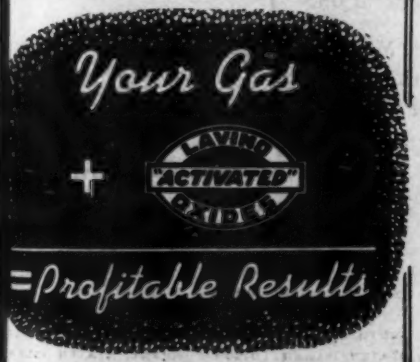
B. B. TURNER, sales manager with the Globe American Corporation of Kokomo, Indiana, for the past twelve years, has been appointed sales manager, range division, The Maytag Company, and has established headquarters at the Maytag home office in Newton.

Elliott Appointment

THE appointment of Bingham H. Van Dyke as manager of the new products department has been announced by the Elliott Company, Jeannette, Pennsylvania.

Previously assistant to the director of research and development, Mr. Van Dyke came

(*Continued on page 26*)



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to the Elliott Company from the War Production Board where he was deputy chief of the Heat Exchanger and Pressure Vessel Branch.

R. R. Ramsay Joins Janitrol Sales Organization

APPOINTMENT of Richard R. Ramsay of Kenmore, New York, to its Janitrol space heating sales organization has been announced by C. B. Phillips, vice president of Surface Combustion Corp., Toledo, Ohio. His territory is to be assigned later.

Mr. Ramsay was a heating sales representative for twelve years with Republic Light, Heat & Power Company and with American Radiator and Standard Sanitary Manufacturing Company for two years.

Sylvania Acquires Wabash

WALTER E. POOR, president of Sylvania Electric Products, Inc., recently announced that the Wabash Appliance Corporation, one of the largest independent manufacturers of photoflash and incandescent lamps, would merge with the Wabash Photolamp Corporation and Birdseye Electric Corporation to become a wholly owned but independently operated Sylvania subsidiary. A. M. Parker remains as president and general manager of Wabash with headquarters at Brooklyn, New York. Sales staffs, sales policies, product brands, and distribution outlets remain unchanged.

The Brooklyn plant will continue manufacture of photolamps, incandescent lamps, reflector lamps, and infra-red heat lamps, with augmented production of light conditioning and other standard light bulbs. Additional factory units planned for installation at the Brooklyn plant during the next few months will step up photoflash production to more than double that of the highest prewar year.

Buckingham Manufacturing Sold; Retains Name

W. H. BUCKINGHAM MANUFACTURING COMPANY, maker of linemen's supplies at Binghamton, New York, has been sold to Walter E. Craw, who until recently was vice president and comptroller of Stow Manufacturing Company, Binghamton.

The new ownership will operate under the name of Buckingham Manufacturing Company, with Mr. Craw as president and general manager. Plans call for continued manufacture of climbers, belts, safety straps, plier pouches, climber straps and pads, tool belts, linemen's knives, and plier handle grips, all supplied to electric power and telephone companies.

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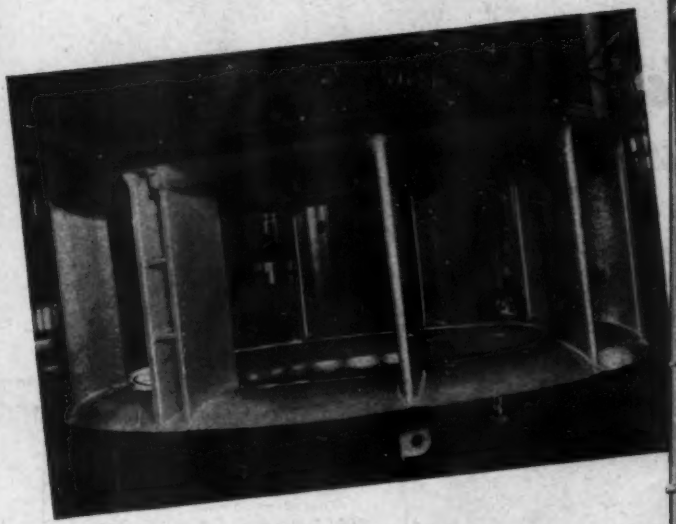

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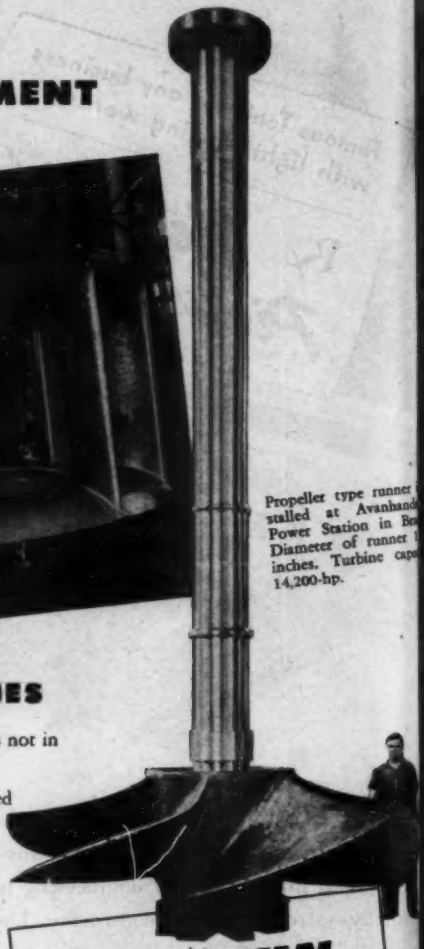

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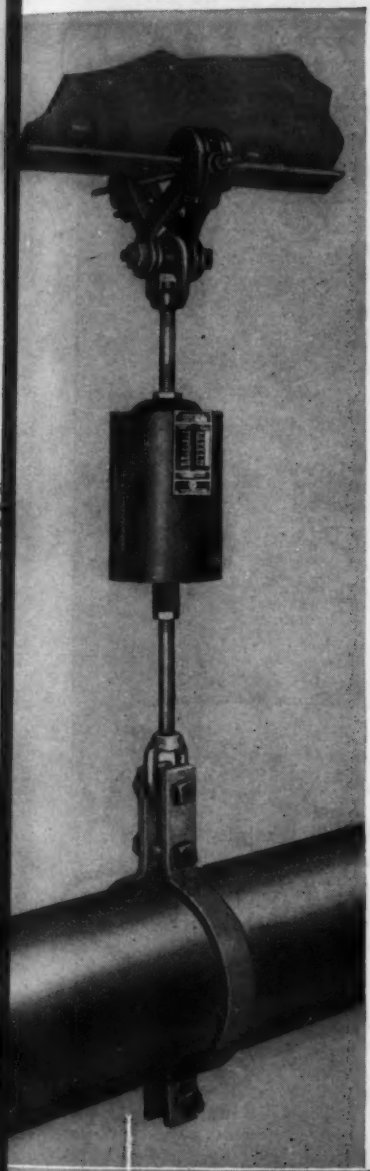

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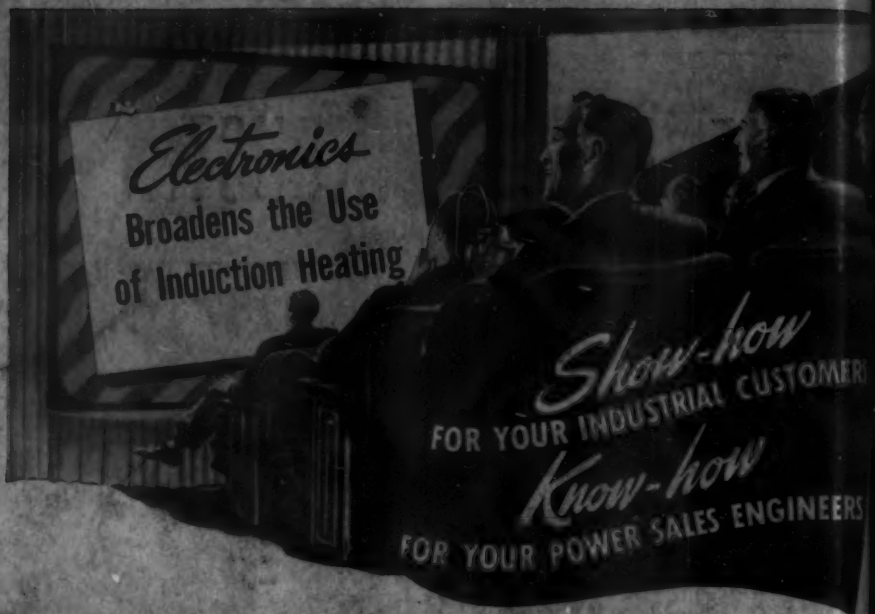

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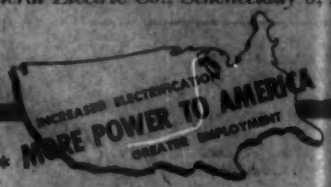

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